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UTAH 2011

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2011 General Session

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**Benjamin McAdams replaced Scott McCoy on 12/29/09*

**Jerry Stevenson replaced Sheldon Killpack on 1/25/10*

**Stuart Adams replaced Greg Bell on 9/16/09*

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**Stephen G. Handy replaced Kevin Garn on 4/15/10*

**Joel Briscoe replaced Christine Johnson on 7/20/10*

**Johnny Anderson replaced Kory Holdaway on 11/25/09*

**Dean Sanpei replaced Stephen Clark 6/10/10*

**Bill Wright replaced Bradley Winn on 12/2/09*

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**Aaron Osmond replaced D. Chris Buttars on 4/15/11*

**Casey O. Anderson replaced Dennis Stowell on 5/17/11*

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**Brian Doughty replaced Jackie Biskupski on 7/18/11*

**Holly Richardson replaced Craig Frank on 1/31/11*

TABLE of CONTENTS

STATE EXECUTIVES AND SUPREME COURT JUSTICES iii
MEMBERS OF THE 58TH LEGISLATURE v
MEMBERS OF THE 59TH LEGISLATURE ix

2010 SECOND SPECIAL SESSION
58TH LEGISLATURE

RESOLUTIONS

JOINT RESOLUTION APPROVING ACCEPTANCE OF FEDERAL EDUCATION FUND 3
JOINT RULES RESOLUTION – APPROPRIATIONS SUBCOMMITTEE AMENDMENTS 3

2011 GENERAL SESSION
59TH LEGISLATURE

CHAPTER

1 BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR BASE BUDGET 7
2 EXECUTIVE OFFICES AND CRIMINAL JUSTICE BASE BUDGET 12
3 INFRASTRUCTURE AND GENERAL GOVERNMENT BASE BUDGET 17
4 SOCIAL SERVICES BASE BUDGET 21
5 NATIONAL GUARD, VETERANS' AFFAIRS, AND LEGISLATURE BASE BUDGET 25
6 STATE CAPITOL PRESERVATION BOARD FEE REVISIONS 27
7 PUBLIC EDUCATION BASE BUDGET 29
8 HIGHER EDUCATION BASE BUDGET 34
9 NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY BASE BUDGET 41
10 RETIREMENT AND INDEPENDENT ENTITIES BASE BUDGET 46
11 HIGHER EDUCATION SUCCESS STIPEND PROGRAM 47
12 CONTROLLED SUBSTANCE MODIFICATIONS 50
13 FIRE PREVENTION AND FIREWORKS ACT AMENDMENTS 75
14 CODIFICATION OF STATE CONSTRUCTION AND FIRECODES 78
15 WORKER CLASSIFICATION COORDINATED ENFORCEMENT 171
16 GOVERNMENT RECORDS AMENDMENTS 174
17 ELECTION LAW AMENDMENTS 200
18 UTAH IMMIGRATION ACCOUNTABILITY AND ENFORCEMENT AMENDMENTS 228
19 MIGRANT WORKERS AND RELATED COMMISSION AMENDMENTS 251
20 IMMIGRATION RELATED AMENDMENTS 256
21 UTAH ILLEGAL IMMIGRATION ENFORCEMENT ACT 261
22 RENEWAL OF JUDGMENT ACT 266
23 CONTROLLED SUBSTANCE DATABASE – LICENSING AMENDMENTS 270
24 LIMITATION OF ACTIONS – CRIMINAL OFFENSES 272

25 ELECTRONIC COMMUNICATIONS IN PUBLIC MEETINGS 273
26 EXPUNGEMENT AMENDMENTS 275
27 HEALTH PROFESSIONAL AUTHORITY – DEATH CERTIFICATES 277
28 VICTIM RIGHTS AMENDMENTS 279
29 MUNICIPAL JUSTICE COURT JUDGE ELECTIONS 280
30 CHARTER SCHOOL REVOLVING ACCOUNT 282
31 ELECTRONIC MEETINGS REVISIONS 285
32 SEXUAL SOLICITATION AMENDMENTS 287
33 CHARGES BY HEALTH PROVIDERS FOR MEDICAL RECORDS 288
34 STATE FIREARM DESIGNATION 289
35 COUNTY OFFICE VACANCIES 290
36 MOTOR VEHICLE EMISSIONS AMENDMENTS 293
37 RESTITUTION AMENDMENTS 295
38 ACCESS TO CONTROLLED SUBSTANCE DATABASE REVISIONS 296
39 ENERGY PRODUCER STATES' AGREEMENT 298
40 LOCAL ELECTION AMENDMENTS 300
41 OVERSIGHT OF BONDING BY COUNTIES 310
42 MILITARY LEAVE FOR AN ELECTED OFFICIAL OF A POLITICAL SUBDIVISION 311
43 COMMUNITY DEVELOPMENT AND RENEWAL AGENCIES AMENDMENTS ... 313
44 PROPERTY TAX EXEMPTION AMENDMENTS 326
45 PUBLIC OFFICIAL CONTACT INFORMATION 328
46 UTAH EDUCATIONAL SAVINGS PLAN AMENDMENTS 332
47 IMPACT FEE AMENDMENTS 351
48 SEX OFFENDER REGISTRY REVISIONS 380
49 STATE OF UTAH RESOURCE MANAGEMENT PLAN FOR FEDERAL LANDS ... 387
50 PERSONAL INJURY CLAIMS BY PERSONAL REPRESENTATIVE 396
51 STATUTORILY REQUIRED REPORTS AMENDMENTS 397
52 ASSESSMENT, COLLECTIONS, AND REFUNDS ACT AMENDMENTS 403
53 DETERMINATION OF STATE TAXABLE INCOME 404
54 SEVERANCE TAX AMENDMENTS 407
55 EMERGENCY MANAGEMENT 409
56 INCARCERATION AMENDMENTS 423
57 CHILD IDENTITY THEFT PROTECTION AMENDMENTS 424
58 PEACE OFFICER RECERTIFICATION AMENDMENTS 425
59 DEBT COLLECTION DATA MATCH WITH WORKER REGISTRY 430
60 CONTROLLED SUBSTANCES ADVISORY COMMITTEE AMENDMENTS 434
61 RADIOLOGY TECHNOLOGIST AND RADIOLOGY PRACTICAL TECHNICIAN LICENSING ACT 435
62 UNFAIR INDUCEMENTS RELATED TO INSURANCE PRODUCTS 441
63 SECURITY PERSONNEL LICENSING ACT AMENDMENTS 450
64 COUNTY JAIL MEDICAL EXPENSES 451
65 CHARGES FOR MEDICAL RECORDS 454
66 OPERATION AND MAINTENANCE NEEDS REPORT FOR UTAH HIGHWAYS .. 456
67 TRANSPORTATION OF MENTAL ILLNESS PATIENTS 457
68 LOCAL DISTRICT AMENDMENTS 459
69 CORPORATE FRANCHISE AND INCOME TAX AMENDMENTS 482
70 ENHANCED PENALTIES FOR HIV POSITIVE OFFENDER AMENDMENTS 487
71 EDUCATION FOR PRESCRIBING CONTROLLED SUBSTANCES 489
72 PRIVATE SECURITY SERVICES 490

73 HIGHER EDUCATION MISSION BASED FUNDING 491
74 ELECTION DISTRICT BOUNDARIES 494
75 MUNICIPAL PROSECUTORIAL DISCRETION 500
76 REGULATORY AMENDMENTS 501
77 DEPARTMENT OF PUBLIC SAFETY DUTIES AMENDMENTS 503
78 BURGLARY OFFENSE AMENDMENTS 504
79 STATE DEBT COLLECTIONS AMENDMENTS 505
80 JUDICIAL EVALUATION AMENDMENTS 514
81 DNA AMENDMENTS 522
82 EMINENT DOMAIN REVISIONS 523
83 PHARMACY BENEFITS MANAGER ACT 525
84 ENTERPRISE ZONE AMENDMENTS 527
85 HIGH OCCUPANCY TOLL LANE CUSTOMER INFORMATION 532
86 534WATER RIGHTS AMENDMENTS 534
87 ITALIAN–AMERICAN HERITAGE MONTH DESIGNATION 535
88 COUNTY RECORDER AMENDMENTS 536
89 FINGERPRINTS OF JUVENILES 544
90 HUMAN BLOOD PROCUREMENT AND USE 546
91 DANGEROUS WEAPON AMENDMENTS 547
92 DEVELOPER FEES 549
93 COUNTY CORRECTIONAL FACILITIES FUNDING AMENDMENTS 565
94 SERVICE ANIMAL AMENDMENTS 567
95 CONDOMINIUM OWNERSHIP ACT MODIFICATIONS 568
96 TOBACCO LICENSING AMENDMENTS 569
97 PROTECTION OF ATHLETES WITH HEAD INJURIES 571
98 JUVENILE AMENDMENTS 573
99 CONCEALED FIREARM PERMIT FEES 577
100 LOCAL GOVERNMENT FEE AUTHORITY 578
101 DRUG PARAPHERNALIA DEFINITION AMENDMENTS 579
102 ENFORCEMENT OF LIENS 581
103 CLEAN OUT THE MEDICINE CABINET MONTH DESIGNATION 583
104 WATER DEVELOPMENT AMENDMENTS 584
105 EMERGENCY PROCEDURES AMENDMENTS 585
106 LOCAL DISTRICT SERVICES AMENDMENTS 586
107 PUBLIC BODY RULES OF PROCEDURE 593
108 INDIGENT DEFENSE ACT AMENDMENTS 607
109 FAMILY EXPENSE AMENDMENTS 609
110 MEDICAL PROFESSIONAL LICENSING DURING A
DECLARED EMERGENCY 610
111 EXPEDITED JURY TRIALS 614
112 BUSINESS RESOURCE CENTER ADVISORY BOARD MODIFICATION 616
113 DOMESTIC VIOLENCE AMENDMENTS 618
114 SMALL CLAIMS COURT JURISDICTION 622
115 NATIONAL GUARD JOINT FORCES HEADQUARTERS MODIFICATIONS 623
116 ENVIRONMENTAL LITIGATION BOND 625
117 USE OF PUBLIC BUILDINGS FOR POLITICAL CAUCUS MEETINGS 626
118 HOSPITAL PROVIDER TAX AMENDMENTS 627
119 TOBACCO SETTLEMENT FUNDS AMENDMENT 628
120 LONG–TERM CARE FACILITY – MEDICAID CERTIFICATION
FOR BED CAPACITY AMENDMENTS 629

121 HOUSING AUTHORITY APPLICATION PROCESS 631
122 WASHINGTON COUNTY VETERANS' HOME 633
123 UTAH COUNTY VETERANS' HOMES 634
124 ANIMAL CONTROL MODIFICATIONS 635
125 SURETY REQUIREMENTS FOR MINING 637
126 MANAGEMENT OF WATER RIGHTS AMENDMENTS 639
127 STATE HIGHWAY SYSTEM MODIFICATIONS 644
128 WATER LAW MODIFICATIONS 646
129 CHILDREN'S JUSTICE CENTER PROGRAM AMENDMENTS 647
130 ANIMAL CONTROL – EXCEPTION FOR COMMUNITY CATS 650
131 CRIME VICTIMS REPARATIONS REVISIONS 655
132 ANNUAL EYE EXAMINATION FOR CHILDREN IN GRADES KINDERGARTEN THROUGH THREE 669
133 SOLID WASTE AMENDMENTS 671
134 HOMEOWNER ASSOCIATION RESERVE ACCOUNT 675
135 REQUIREMENTS FOR CONSTABLES 677
136 JOINT USE OF A CANAL OR DITCH 678
137 COMMUNITY ASSOCIATION ACT AMENDMENTS 680
138 POST RETIREMENT EMPLOYMENT AMENDMENTS 681
139 TRANSPARENCY IN HEALTH CARE PROVIDER ADVERTISING 684
140 COUNTY PURCHASING AGENT AMENDMENTS 685
141 QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH 686
142 POLLUTION CONTROL FACILITY AMENDMENTS 687
143 COURT BUDGET AMENDMENTS 689
144 ABATEMENT OF WEEDS, GARBAGE, REFUSE, AND UNSIGHTLY OBJECTS .. 691
145 GOVERNMENT BONDING AMENDMENTS 692
146 PUBLIC TRANSIT REVISIONS 698
147 IMMUNIZATIONS FOR TEEN MOTHERS 700
148 HEALTH REFORM – COST CONTAINMENT 702
149 MINERAL AND PETROLEUM LITERACY 703
150 OFF–HIGHWAY VEHICLE OPERATOR RESPONSIBILITIES 704
151 OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES 705
152 VETERAN'S IDENTIFICATION ON DRIVER LICENSE OR IDENTIFICATION CARD 721
153 CAPITAL OUTLAY FUNDING MODIFICATIONS 728
154 ELECTION AMENDMENTS 730
155 WATER QUALITY AMENDMENTS 731
156 RAW HONEY AMENDMENTS 733
157 ASSESSMENT OF PROPERTY WITH CONSERVATION EASEMENT 734
158 GUARDIAN AD LITEM RESPONSIBILITIES 736
159 PEDESTRIANS ON FREEWAYS 740
160 FIREARM LAWS MODIFICATIONS 741
161 ABORTION CLINIC LICENSING 745
162 CONTRACTING FOR MEDICAID ELIGIBILITY DETERMINATION SERVICES 754
163 DELINQUENT PROPERTY TAX AMENDMENTS 755
164 TOBACCO RELATED PENALTY AMENDMENTS 757
165 DEATH PENALTY PROCEDURES AMENDMENTS 760
166 COMMUNITY SERVICE MEDICAID PILOT PROGRAM 762

167 REUNIFICATION SERVICES AMENDMENTS 763
168 RADIO FREQUENCY IDENTIFICATION 768
169 SOCIAL SERVICES – EMPLOYMENT FIRST PRIORITY 769
170 ALARM SYSTEM AMENDMENTS 771
171 AMENDMENTS TO TRANSPORTATION PROVISIONS 772
172 MUNICIPAL ENFORCEMENT REGARDING PROPERTY MAINTENANCE 774
173 STATE AGENCY REALIGNMENT 777
174 ASBESTOS REQUIREMENTS 779
175 HIGHWAY CONSTRUCTION CONTRACT AMENDMENTS 782
176 MIDTERM VACANCIES IN MUNICIPAL OFFICES 783
177 HIV TESTING OF ALLEGED SEX OFFENDERS 785
178 HOMELESS COORDINATING COMMITTEE MODIFICATIONS 792
179 BAIL BOND AMENDMENTS 793
180 MOTOR HOME TAXES AND FEES 796
181 VETERANS PREFERENCE AMENDMENTS 797
182 REGULATION OF MINING OPERATIONS 800
183 APPROACHING STATIONARY EMERGENCY VEHICLE AMENDMENTS 801
184 HIGHER EDUCATION COMPENSATION
APPROPRIATION REALLOCATIONS 802
185 NUISANCE AMENDMENTS 803
186 DOMESTIC VIOLENCE SERVICES 804
187 STATE HOSPITAL REVISIONS 806
188 DEPARTMENT OF WORKFORCE SERVICES' REGIONAL
WORKFORCE SERVICE AREAS AMENDMENTS 807
189 MOTOR VEHICLE DIVISION FEE AMENDMENTS 816
190 UNIFORM DRIVER LICENSE ACT AMENDMENTS 822
191 RURAL FAST TRACK PROGRAM AMENDMENTS 839
192 HEALTH DISPARITIES AND RELATED AMERICAN INDIAN PROGRAMS 841
193 CONCEALED FIREARM ACT AMENDMENTS 843
194 EMERGENCY FOOD AGENCY AMENDMENTS 846
195 REGULATION OF SIGN COMPANIES 848
196 ALZHEIMER'S STATE PLAN TASK FORCE 852
197 TORTIOUS ACT ARBITRATION 855
198 DISTRIBUTION OF REVENUES COLLECTED UNDER THE
LOCAL SALES AND USE TAX ACT 858
199 SUNSET REAUTHORIZATIONS 863
200 BOARD OF PARDONS RETIREMENT AMENDMENTS 865
201 TEMPORARY WATER SHORTAGE EMERGENCY – MILITARY FACILITIES 869
202 MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT AMENDMENTS 870
203 NEW AUTOMOBILE FRANCHISE ACT AMENDMENTS 874
204 LEAVING A CHILD UNATTENDED IN A MOTOR VEHICLE 881
205 LOCAL DISTRICT SERVICE AMENDMENTS 882
206 LICENSING OF PHYSICIAN–EDUCATORS 887
207 SURPLUS PROPERTY AMENDMENTS 890
208 JUDICIARY AMENDMENTS 895
209 POLITICAL SUBDIVISIONS ADMINISTRATION AMENDMENTS 904
210 MUNICIPAL LAND USE AMENDMENTS 914
211 MEDICAID REFORM 916
212 LOBBYIST DISCLOSURE AND REGULATION ACT REVISIONS 922
213 DISPOSAL OF ELECTRONIC WASTE 925

214 UTAH MEDICAL PRACTICE ACT AMENDMENTS 927
215 TAX COMMISSION AMENDMENTS 943
216 LOCAL HOUSING AUTHORITY AMENDMENTS 945
217 DIVISION OF HOUSING AND COMMUNITY
DEVELOPMENT AMENDMENTS 947
218 EXECUTIVE RESIDENCE COMMISSION 949
219 CAPITAL DEVELOPMENT AND IMPROVEMENT PROCESS
APPROVAL REQUIREMENTS AMENDMENTS 951
220 LABOR ORGANIZATION PROVISIONS IN TEACHER CONTRACTS 954
221 UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT AMENDMENTS 955
222 INTERMOUNTAIN WEATHERIZATION TRAINING FUND 963
223 PUBLIC TRANSIT AMENDMENTS 964
224 HISTORIC AREAS OR SITES AMENDMENTS 967
225 SALT LAKE COUNTY HIGHWAY PROJECT FUNDING 968
226 CONTROLLED SUBSTANCE DATABASE AMENDMENTS 970
227 ELECTRONIC TRANSMISSIONS AND DIRECTORS ACTIONS 972
228 CHANGES TO TRUST DEED FORECLOSURE PROVISIONS 973
229 TOBACCO PRODUCTS AMENDMENTS 976
230 EMERGENCY RESPONDER FEES 978
231 SMALL MINING OPERATIONS 979
232 INDUSTRIAL ASSISTANCE FUND AMENDMENTS 981
233 GRANDPARENTS' VISITATION RIGHTS 982
234 MILITARY INSTALLATION DEVELOPMENT AUTHORITY AND
ANNEXATION AMENDMENTS 984
235 PREVENTING BULLYING AND HAZING IN ELEMENTARY
AND SECONDARY SCHOOLS 987
236 ECONOMIC DEVELOPMENT COORDINATION 990
237 STATE PARKS ACCESS HIGHWAY 992
238 JUSTICE COURT MODIFICATIONS 994
239 DEPOSIT OF SEVERANCE TAX REVENUES INTO PERMANENT
STATE TRUST FUND 995
240 CATASTROPHIC MENTAL HEALTH COVERAGE – SUNSET ACT 996
241 ACCIDENT RESPONSIBILITY AMENDMENTS 998
242 WORKERS' COMPENSATION RATE FILINGS 1000
243 PENALTIES FOR UNAUTHORIZED USE OF RECORDS 1001
244 BUSINESS ENTITY MERGERS 1006
245 ELECTION OFFICIALS' FUNDS 1008
246 VEHICLE IMPOUND AMENDMENTS 1009
247 SCHOOL AND INSTITUTIONAL TRUST LANDS 1011
248 VOLUNTEER SEARCH AND RESCUE WORKERS'
COMPENSATION CLAIMS 1025
249 JOINT PROFESSIONAL SCHOOL OF VETERINARY MEDICINE 1028
250 PROHIBITING CONTRIBUTIONS DURING SPECIAL SESSION 1029
251 STATE BONDING COMMISSION BONDING AUTHORITY 1030
252 FEDERAL LAW EVALUATION AND RESPONSE 1034
253 PROPERTY AND CASUALTY CERTIFICATE OF INSURANCE ACT 1045
254 INCOME TAX CREDIT FOR COMBAT RELATED DEATH 1047
255 HOMEOWNER ASSOCIATION AMENDMENTS 1048
256 TRANSPORTATION CHANGES 1050
257 AUDIT OF STATE BUDGETS 1053

258 DISPATCHER SERVICE AMENDMENTS 1054
259 MOTOR AND SPECIAL FUEL TAX ACT AMENDMENTS 1057
260 STATE FIRE CODE APPEALS 1061
261 LABOR COMMISSION RELATED AMENDMENTS 1062
262 SERVICE CONTRACTS ACT AMENDMENTS 1063
263 CONTINUING EDUCATION REQUIREMENTS FOR
LANDSCAPE ARCHITECTS 1065
264 SPECIAL GROUP LICENSE PLATE AMENDMENTS 1066
265 ADMINISTRATIVE SERVICES AMENDMENTS 1069
266 WORKERS' COMPENSATION PREMIUM ASSESSMENT 1074
267 APPOINTMENT OF DIRECTOR OF THE DIVISION OF HEALTH
CARE FINANCING 1077
268 CLASSIC CAR INSPECTIONS 1078
269 ADMINISTRATIVE RULES REAUTHORIZATION 1080
270 TECHNOLOGY TECHNICAL AMENDMENTS 1081
271 STATE EMBLEM OF SERVICE AND SACRIFICE 1091
272 RESTRICTIONS ON POLITICAL SUBDIVISIONS REGARDING
THE REGULATION OF KNIVES 1092
273 PREPAID WIRELESS 911 SERVICE CHARGE 1095
274 INSURANCE REQUIREMENTS FOR CHILD CARE BUSES 1097
275 TAXATION OF SURPLUS LINES OF INSURANCE 1098
276 MONEY MANAGEMENT ACT AMENDMENTS 1101
277 ABORTION FREEDOM OF CONSCIENCE 1103
278 INSURANCE AMENDMENTS RELATING TO ABORTION 1104
279 CHANGES TO FIT PREMISES ACT 1105
280 SCHOOLS FOR THE DEAF AND BLIND FOUNDATION 1107
281 BEER TAX AMENDMENTS 1108
282 LOCAL DISTRICT TAX AMENDMENTS 1109
283 UTAH STATE FLAG DAY COMMEMORATION 1110
284 INSURANCE LAW RELATED AMENDMENTS 1111
285 SALES AND USE TAX ACT REVISIONS 1175
286 SCHOOL TERMINATION PROCEDURES MODIFICATIONS 1207
287 MOTOR CARRIER TRANSPORTATION CONTRACT
INDEMNITY AGREEMENTS 1209
288 SALES AND USE TAXES ON CERTAIN LODGING RELATED PURCHASES 1210
289 REAL ESTATE RELATED AMENDMENTS 1223
290 VOLUNTEER FIREFIGHTERS' RETIREMENT AMENDMENTS 1282
291 ELECTION DAY VOTING CENTERS 1284
292 BALLOT PLACEMENT AMENDMENTS 1289
293 SCHOOL COMMUNITY COUNCILS AMENDMENTS 1301
294 CANINE BODY ARMOR RESTRICTED ACCOUNT AND INCOME
TAX CONTRIBUTION 1306
295 DEBT SERVICE OBLIGATIONS OF A DIVIDED SCHOOL DISTRICT 1310
296 ADVERTISEMENTS ON SCHOOL BUSES 1312
297 STATUTORY CONSTRUCTION AMENDMENTS 1313
298 CIVICS EDUCATION AMENDMENTS 1528
299 MECHANICS' LIENS REVISIONS 1529
300 DIVIDED SCHOOL DISTRICT ASSETS AND LIABILITIES 1544
301 CONCURRENT ENROLLMENT TRANSCRIPTS 1550
302 CURRENCY AMENDMENTS 1552

303 BUDGETARY PROCEDURE AMENDMENTS 1554
304 WATER QUALITY BOARD POWERS AND DUTIES 1595
305 COUNTY AMENDMENTS 1599
306 TECHNOLOGY AND LIFE SCIENCE ECONOMIC DEVELOPMENT ACT AND RELATED TAX CREDITS 1601
307 ALCOHOLIC BEVERAGE CONTROL ACT –MODIFICATIONS 1608
308 PER DIEM AND TRAVEL MODIFICATIONS 1649
309 STATE TAX COMMISSION TAX, FEE, OR CHARGE ADMINISTRATION AND COLLECTION AMENDMENTS 1655
310 ELECTION ADMINISTRATION BY ELECTION OFFICERS 1684
311 SHARE CERTIFICATES IN WATER COMPANIES 1690
312 ALCOHOL OR DRUG RELATED OFFENSE AMENDMENTS 1696
313 HIGHER EDUCATION RESIDENCY REQUIREMENTS 1706
314 SALES AND USE TAX EXEMPTION FOR TEXTBOOKS FOR HIGHER EDUCATION 1709
315 INITIATIVE AMENDMENTS 1739
316 CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL REPORTING AMENDMENTS 1744
317 SECURITIES RELATED AMENDMENTS 1746
318 SECURITIES FRAUD REPORTING PROGRAM ACT 1755
319 UTAH UNIFORM SECURITIES ACT ENFORCEMENT 1759
320 SEXUAL EXPLOITATION AMENDMENTS 1768
321 SCHOOL PERFORMANCE REPORTING 1802
322 SCHOOL DISTRICT SUPERINTENDENTS AMENDMENTS 1804
323 RESTRICTIONS ON LOBBYING EXPENDITURES –PUBLIC EDUCATION 1805
324 FORGERY LAW AMENDMENTS 1806
325 PROPERTY TAX REVISIONS 1808
326 FEDERAL FUNDS PROCEDURES ACT AMENDMENTS 1809
327 MILITARY AND OVERSEAS VOTING 1812
328 WORKERS' COMPENSATION COVERAGE WAIVERS 1834
329 TELECOMMUNICATIONS AMENDMENTS 1843
330 EDUCATION POLICY AMENDMENTS 1846
331 REFERENDUM AMENDMENTS 1848
332 GOVERNMENT OPERATIONS AMENDMENTS 1850
333 ELECTION REGISTRATION AMENDMENTS 1852
334 ALCOHOLIC BEVERAGE AMENDMENTS 1853
335 ELECTION LAW REVISIONS 1930
336 BONDING REQUIREMENTS FOR GOVERNMENT OFFICERS AND EMPLOYEES 1941
337 ERRORS AND OMISSIONS COVERAGE FOR INSURANCE PRODUCERS 1946
338 MOTION PICTURE INCENTIVES AMENDMENTS 1950
339 MECHANICS' LIENS AMENDMENTS 1955
340 REVISOR'S STATUTE 1969
341 DEDICATION AND ABANDONMENT OF PUBLIC HIGHWAYS 2010
342 UTAH CODE TECHNICAL AMENDMENTS 2012
343 FATALITY REVIEW ACT AMENDMENTS 2123
344 CHILDREN'S HEALTH INSURANCE AND MEDICAID ADMINISTRATIVE SIMPLIFICATION 2128
345 COUNTY RECORDER REVISIONS 2134
346 OUTDOOR ADVERTISING AMENDMENTS 2135

347 CAMPAIGN FINANCE REVISIONS 2141
348 PAWNSHOP AND SECONDHAND MERCHANDISE TRANSACTION INFORMATION ACT AMENDMENTS 2149
349 OPERATION AND MANAGEMENT OF CHARTER SCHOOLS 2152
350 PROBATE LAW AMENDMENTS 2154
351 DRIVER LICENSE SUSPENSION AMENDMENTS 2156
352 RETIREMENT SYSTEM DIVESTMENT 2160
353 UNINCORPORATED BUSINESS ENTITY UNIFORM ACTS 2162
354 REAL ESTATE TRANSACTIONS AND SECURITIES 2280
355 CONDOMINIUM AND COMMUNITY ASSOCIATION REVISIONS 2286
356 UTAH COMMISSION ON UNIFORM STATE LAWS 2311
357 MOTOR VEHICLE RENTAL COMPANY FEE DISCLOSURES 2313
358 INCOME TAX CREDITS FOR CLEANER BURNING FUELS 2314
359 MINIMUM SCHOOL PROGRAM AND PUBLIC EDUCATION BUDGET AMENDMENTS 2318
360 CURRENT FISCAL YEAR SUPPLEMENTAL APPROPRIATIONS 2325
361 DEPARTMENT OF TRANSPORTATION SETTLEMENT AGREEMENT AMENDMENTS 2341
362 MEDICAL ASSISTANCE ACCOUNTABILITY 2344
363 TOW TRUCK AMENDMENTS 2346
364 SCHOOL FINANCE AMENDMENTS 2349
365 FEDERAL RECEIPTS REPORTING REQUIREMENTS 2351
366 DISABILITY AMENDMENTS 2353
367 OCCUPATIONS AND PROFESSIONS AMENDMENTS 2500
368 CONCEALED FIREARM ACT MODIFICATIONS 2515
369 SCHOOL DISTRICT DIVISION AMENDMENTS 2518
370 RESTRUCTURING OF THE DEPARTMENT OF COMMUNITY AND CULTURE 2521
371 SCHOOL DISTRICT PROPERTY TAX REVISIONS 2555
372 READING PROGRAM AMENDMENTS 2581
373 STATE HEALTH INSURANCE AMENDMENTS 2586
374 WATER ISSUES TASK FORCE 2587
375 STATE ENERGY AMENDMENTS 2588
376 PROCUREMENT CODE AMENDMENTS 2590
377 COUNTY USE OF LAND USE ORDINANCE 2595
378 BUDGETING PROCEDURES AMENDMENTS 2598
379 NEW FISCAL YEAR SUPPLEMENTAL APPROPRIATIONS ACT 2603
380 APPROPRIATIONS ADJUSTMENTS 2706
381 CURRENT SCHOOL YEAR SUPPLEMENTAL PUBLIC EDUCATION BUDGET ADJUSTMENTS 2725
382 STATE AGENCY AND HIGHER EDUCATION COMPENSATION APPROPRIATIONS 2727
383 AGRICULTURE AMENDMENTS 2741
384 STATE COMMISSION AMENDMENTS 2755
385 OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN AMENDMENTS 2775
386 BOATING AMENDMENTS 2778
387 POLITICAL SUBDIVISION'S PROCUREMENT PROCESS FOR CONSTRUCTION PROJECTS 2783
388 ASSESSMENT AREA AMENDMENTS 2785
389 LOBBYIST TRAINING 2789

390 LEGISLATIVE COUNSEL RELATING TO UNITED STATES SENATORS 2791
391 AMENDMENTS TO CERTAIN LOCAL GOVERNMENT TAXES AND FEES 2792
392 TECHNOLOGY COMMERCIALIZATION AND INNOVATION ACT 2806
393 GENERAL OBLIGATIONS BONDS AUTHORIZATIONS 2809
394 CLEAN FUEL VEHICLE DECAL 2811
395 RESTORATION OF THE RIGHT TO VOTE AND HOLD ELECTIVE OFFICE 2814
396 CAMPAIGN AND FINANCIAL REPORTING AMENDMENTS 2818
397 PUBLIC EDUCATION REGIONAL SERVICE CENTERS 2831
398 MORTGAGE AND REAL ESTATE LICENSURE EXEMPTIONS FOR ATTORNEYS 2832
399 TEACHER SALARY SUPPLEMENT PROGRAM AMENDMENTS 2835
400 HEALTH REFORM AMENDMENTS 2837
401 PUBLIC SCHOOL PRIVACY AMENDMENTS 2876
402 SCHOOL DISTRICT LEAVE POLICIES 2877
403 CLUBS IN PUBLIC SCHOOLS 2879
404 COMMISSION ON CIVIC AND CHARACTER EDUCATION 2882
405 PUBLIC EDUCATION ANNUAL REPORT AMENDMENTS 2884
406 MILITARY SURVIVORS – TUITION WAIVER AMENDMENTS 2886
407 LAND USE REVISIONS 2887
408 PRISON RELOCATION AND DEVELOPMENT AUTHORITY ACT 2901
409 REVENUE BOND AND CAPITAL FACILITIES AUTHORIZATIONS 2903
410 TAX REVISIONS 2909
411 EXTENSION OF RECYCLING MARKET DEVELOPMENT ZONE ACT AND RELATED TAX CREDITS 2915
412 UNIFORM INTERSTATE FAMILY SUPPORT ACT 2916
413 CONSTRUCTION LICENSEES RELATED AMENDMENTS 2932
414 K–3 READING AMENDMENTS 2956
415 DRIVER LICENSE AND IDENTIFICATION CARD AMENDMENTS 2957
416 AMENDMENTS TO LOCAL SALES AND USE TAXES FOR BOTANICAL, CULTURAL, RECREATIONAL, AND ZOOLOGICAL ORGANIZATIONS OR FACILITIES 2962
417 SCHOOL GRADING SYSTEM 2970
418 K–3 READING IMPROVEMENT PROGRAM ACCOUNTABILITY 2974
419 STATEWIDE ONLINE EDUCATION PROGRAM 2976
420 PUBLIC SCHOOL TEACHER TENURE MODIFICATIONS 2982
421 IGNITION INTERLOCK SYSTEM AMENDMENTS 2984
422 LEGAL NOTICE AMENDMENTS 2989
423 MARKETABLE RECORD TITLE AMENDMENTS 2992
424 SHAREHOLDER ACTION WITHOUT MEETING 2993
425 MOTOR VEHICLE INSURANCE – NAMED DRIVER EXCLUSION AMENDMENTS 2996
426 UTILITIES – UNDERGROUND FACILITIES AND PIPELINES 2997
427 CAREER SERVICE AMENDMENTS 3002
428 DRIVER LICENSE QUALIFICATION AMENDMENTS 3005
429 STATE CHARTER SCHOOL BOARD AMENDMENTS 3011
430 3012 NEGLIGENT CREDENTIALING 3012
431 MOTOR VEHICLE INSURANCE COVERAGE AMENDMENTS 3013
432 SECURITY AGENCY QUALIFICATION AMENDMENTS 3024
433 CHARTER SCHOOL STUDENTS' PARTICIPATION IN EXTRACURRICULAR ACTIVITIES 3034

434 TEACHER EFFECTIVENESS EVALUATION PROCESS 3036
435 SECURED CREDITOR AMENDMENTS 3040
436 CHARTER SCHOOL PROPERTY TAX AMENDMENTS 3041
437 GRAND JURY MODIFICATIONS 3042
438 SPECIALTY LICENSE PLATE AMENDMENTS 3045
439 AMENDMENTS TO PUBLIC EMPLOYEE'S BENEFIT AND INSURANCE PROGRAM 3050
440 PROSTATE CANCER SPECIAL GROUP LICENSE PLATE 3090
441 TRANSPORTATION FUNDING REVISIONS 3094
442 STATE GOVERNMENT WORK WEEK 3101

RESOLUTIONS

CONCURRENT RESOLUTION URGING CONGRESS TO ADDRESS EMPLOYMENT RELATED CHILD IDENTITY THEFT 3105
UTAH STATE FLAG CONCURRENT RESOLUTION 3106
CONCURRENT RESOLUTION URGING CONGRESS TO PASS BALANCED BUDGET AMENDMENT TO U.S. CONSTITUTION 3107
WILD HORSE AND BURRO ADVISORY BOARD CONCURRENT RESOLUTION 3107
PATIENT- AND SAFETY-CENTERED PRESCRIPTION LABELS CONCURRENT RESOLUTION 3108
CONCURRENT RESOLUTION SUPPORTING PUBLIC POLICIES THAT PROMOTE OUTDOOR ACTIVITIES FOR CHILDREN 3109
CONCURRENT RESOLUTION ON PROVIDING CONTINUING FEDERAL FINANCIAL ASSISTANCE FOR THE DELIVERY OF BASIC SERVICES TO DUTCH JOHN, UTAH 3110
LUPUS AWARENESS MONTH CONCURRENT RESOLUTION 3111
CONCURRENT RESOLUTION RECOGNIZING 100TH ANNIVERSARY OF SALT LAKE ROTARY 3112
CONCURRENT RESOLUTION OPPOSING UNITED STATES SECRETARY OF INTERIOR'S WILDERNESS RE-INVENTORY 3113
SECURE RURAL SCHOOLS CONCURRENT RESOLUTION 3114
RESOLUTION SUPPORTING UTAH HIGHWAY PATROL USE OF WHITE CROSSES OR OTHER APPROPRIATE SYMBOLS AS ROADSIDE MEMORIALS 3115
CONCURRENT RESOLUTION HONORING JERRY SLOAN AND PHIL JOHNSON ... 3117
CONCURRENT RESOLUTION APPROVING SOLID WASTE FACILITY CLASSIFICATION CHANGE 3119
NAVAJO CODE TALKERS' JOINT RESOLUTION 3119
RULES RESOLUTION ON ELECTRONIC MEETINGS 3120
JOINT RESOLUTION ON JOINT RULES CHANGES 3122
JOINT RESOLUTION APPROVING COMPENSATION OF IN-SESSION EMPLOYEES 3123
JOINT RESOLUTION OPPOSING THE ENVIRONMENTAL PROTECTION AGENCY'S REGULATION OF GREENHOUSE GASES 3125
SELECTIONS OF UNAPPROPRIATED FEDERAL LANDS JOINT RESOLUTION 3126
MASTER STUDY RESOLUTION 3127
VETERANS DAY JOINT RESOLUTION 3135
JOINT RESOLUTION AUTHORIZING LEASE OF RIO GRANDE DEPOT 3136
UTAH MITOCHONDRIAL DISEASE AWARENESS WEEK JOINT RESOLUTION 3136

JOINT RESOLUTION TO AMEND RULE OF EVIDENCE 3137
STATE JURISDICTION OF FEDERALLY MANAGED
LANDS JOINT RESOLUTION 3138
TAIWAN JOINT RESOLUTION 3141
JOINT RULES AMENDMENTS FOR ESTABLISHING BASE BUDGETS 3142
JOINT RESOLUTION ON STATE HEALTH INSURANCE 3143
HOUSE RULES AMENDMENTS RESOLUTION 3144
HOUSE RULES CHANGES RESOLUTION 3146
CRISIS INTERVENTION TEAM PROGRAM CONCURRENT RESOLUTION 3149
FINANCIAL RESPONSIBILITY CONCURRENT RESOLUTION 3151
CONCURRENT RESOLUTION SUPPORTING CONTINUED FEDERAL
FUNDING OF THE CENTRAL UTAH PROJECT 3153
COMMUNICATIONS SPECTRUM TRANSLATOR SYSTEM
CONCURRENT RESOLUTION 3154
CONCURRENT RESOLUTION HONORING THE SORENSON
LEGACY FOUNDATION 3155
CONCURRENT RESOLUTION APPROVING A COMMERCIAL
NONHAZARDOUS SOLID WASTE LANDFILL 3156
PHILO T. FARNSWORTH CONCURRENT RESOLUTION 3157
DIXIE STATE COLLEGE CONCURRENT RESOLUTION 3158
WEAR RED MONTH CONCURRENT RESOLUTION 3158
ROTARY CLUB CONCURRENT RESOLUTION 3159
CONCURRENT RESOLUTION HONORING PROVIDERS OF HEALTH CARE
SERVICES TO MILITARY PERSONNEL AND THEIR DEPENDENTS 3160
DELISTING OF WOLVES CONCURRENT RESOLUTION 3160
BONDS OF FRIENDSHIP WITH IRAN CONCURRENT RESOLUTION 3161
ADULT IMMUNIZATION AWARENESS MONTH JOINT RESOLUTION 3163
JOINT RESOLUTION APPROVING SCENIC BYWAY CORRIDOR
MANAGEMENT PLAN 3163
JOINT RULES RESOLUTION ON FISCAL NOTE PROCESS 3164
JOINT RESOLUTION URGING CONGRESS TO LIMIT THE FREEZE ON
LONGER COMBINATION VEHICLE USE IN THE WESTERN STATES 3167
FIBROMYALGIA AWARENESS DAY JOINT RESOLUTION 3168
RONALD REAGAN DAY JOINT RESOLUTION 3169
JOINT RESOLUTION CLOSING OREM COURT FACILITY 3169
JOINT RESOLUTION – IMMIGRATION 3170
JOINT RESOLUTION – REQUEST FOR PROPOSALS 3171
COMMUNICATIONS DEVICE USAGE JOINT RESOLUTION 3172
JOINT RESOLUTION APPROVING THE HOUGHTON CASE
FINAL SETTLEMENT AGREEMENT 3172
JOINT RESOLUTION SUPPORTING SANPETE COUNTY INCREASING THE
NUMBER OF CONTRACT BEDS AT ITS CORRECTIONAL FACILITIES 3173
RELATIONS WITH THE REPUBLIC
OF TURKEY JOINT RESOLUTION 3173
JOINT RESOLUTION SUPPORTING EXPANSION OF CORRECTIONAL
FACILITIES IN SAN JUAN COUNTY 3174
FEDERAL LAW JOINT RESOLUTION 3175
SENATE RULES RESOLUTION – SENATE RULES RECODIFICATION 3176

LEGISLATION VETOED OR DECLINED BY THE GOVERNOR
TRANSPORTATION FUNDING REVISIONS *(Veto Overridden)* 3094
STATE GOVERNMENT WORK WEEK *(Veto Overridden)* 3101
PATIENT ACCESS REFORM 3215
ECONOMIC DEVELOPMENT THROUGH EDUCATION/CAREER ALIGNMENT 3221

2011 FIRST SPECIAL SESSION
59TH LEGISLATURE

CHAPTER
1 REPEAL OF H.B. 477, 2011 ANNUAL GENERAL SESSION 3225

2011 SECOND SPECIAL SESSION
59TH LEGISLATURE

CHAPTER
1 BONDS SECURED BY FEDERAL MINERAL LEASE PAYMENTS 3228
2 ALCOHOLIC BEVERAGE CONTROL ACT AMENDMENTS 3230
3 RETENTION ELECTIONS FOR JUSTICE COURT JUDGES 3248
4 PRISON RELOCATION AND DEVELOPMENT AUTHORITY ACT AMENDMENTS 3250
5 INSURANCE AMENDMENTS 3251

RESOLUTION
CONCURRENT RESOLUTION SUPPORTING UNITED STATES' BALANCED BUDGET CONSTITUTIONAL AMENDMENT 3257

UTAH CODE SECTION INDEX 3259

TECHNICAL ACTION INDEX 3287

SUBJECT INDEX 3297

BILL NUMBER INDEX 3323

LAWS

of the

STATE OF UTAH, 2011

Passed at the
SECOND SPECIAL SESSION
of the
FIFTY-EIGHTH LEGISLATURE

Convened and Adjourned Sine Die at the State Capitol
in the City of Salt Lake
November 17, 2010

STATE OF UTAH

OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 2010 Second Special Session of the Fifty-Eighth Legislature of the State of Utah, as they appear of record in the Office of the Lieutenant Governor; and

That the 2010 Second Special Session of the Fifty-Eighth Legislature of the State of Utah convened and adjourned at the Capitol in Salt Lake City on the 17th of November, 2010.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah at Salt Lake City, this 19th day of July, 2011.

Greg Bell
Lieutenant Governor

H.J.R. 201
Passed November 17, 2010
Effective November 17, 2010

JOINT RESOLUTION APPROVING ACCEPTANCE OF FEDERAL EDUCATION FUND

Chief Sponsor: Rebecca D. Lockhart
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This joint resolution of the Legislature approves acceptance by the state of Utah of $101,303,951 in federal education funds.

Highlighted Provisions:

This resolution:

- approves acceptance by the state of Utah of $101,303,951 in federal funds from Public Law 111-226, Sec. 101, Education Jobs Fund.

Be it resolved by the Legislature of the state of Utah:

WHEREAS, Congress passed, and the President signed, Public Law 111-226, Sec. 101, Education Jobs Fund;

WHEREAS, under the terms of Public Law 111-226, Sec. 101, the Secretary of the United States Department of Education is required to allocate federal education funds to each state that has filed an application requesting the federal education funds;

WHEREAS, Governor Herbert, on behalf of the state of Utah, filed an application with the United States Department of Education requesting the federal education funds on September 7, 2010;

WHEREAS, on September 13, 2010, the Secretary of Education announced that Utah would receive $101,303,951 in federal education funds from the Education Jobs Fund;

WHEREAS, the United States Congress and the United States government have consistently and routinely usurped the role of the states in our federal system;

WHEREAS, that usurpation has generally taken the form of the federal government circumventing state legislatures and the state legislatures' appropriation process by granting monies directly to the governor, to the state executive branch, or to local government entities;

WHEREAS, Public Law 111-226, Sec. 101, continues this circumvention process by authorizing the United States Secretary of Education to grant federal education jobs funds directly to other educational entities in the state if the governor fails to apply for the funds;

WHEREAS, Section 63J-5-204 of the Utah Code requires that the Legislature approve a federal fund request within three months of the request if the request would "result in the state receiving total payments of $10,000,000 or more per year from the federal government"; and

WHEREAS, if the Legislature fails to approve the education jobs federal funds request, it is anticipated that the United States Secretary of Education will attempt to grant federal education jobs funds directly to other educational entities in the state in violation of classic principles of federalism:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah approves acceptance by the state of Utah of $101,303,951 in federal education funds from Public Law 111-226, Sec. 101, Education Jobs Fund.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Governor Herbert, the members of Utah's Congressional delegation, the presiding officers in the House and Senate of the state legislatures in Idaho, Wyoming, Colorado, Arizona, Nevada, and Montana, and the United States Secretary of Education.

S. J. R. 201
Passed November 17, 2010
Effective November 17, 2010

JOINT RULES RESOLUTION - APPROPRIATIONS SUBCOMMITTEE AMENDMENTS

Chief Sponsor: Margaret Dayton
House Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This rules resolution modifies the Legislative Rules to change the structure of the Legislature's Appropriations Subcommittees.

Highlighted Provisions:

This resolution:

- changes the number of the Legislature's appropriations subcommittees from 10 to eight; and
- changes the names and jurisdictions of the Legislature's appropriations subcommittees.

Legislative Rules Affected:

AMENDS:

JR3-2-302

Be it resolved by the Legislature of the state of Utah:

Section 11. JR3-2-302 is amended to read:

JR3-2-302. Appropriation Subcommittees -- Created -- Membership -- Quorum and Voting Requirements.

(1) The members of the Joint Appropriations Committee shall be divided into the following subcommittees:

(a) [~~Capital Facilities and Government Operations~~] Infrastructure and General Government;

[~~(b) Commerce and Workforce Services;~~]

[~~(c)~~] (b) Business, Economic Development, and [~~Revenue~~] Labor;

[~~(d)~~] (c) Executive Offices and Criminal Justice;

[~~(e) Health and Human~~] (d) Social Services;

[~~(f)~~] (e) Higher Education;

[~~(g)~~] (f) Natural Resources, Agriculture, and Environmental Quality;

[~~(h)~~] (g) Public Education; and

[~~(i)~~] (h) Retirement and Independent Entities[~~; and~~].

[~~(j) Transportation, Environmental Quality, National Guard, and Veterans' Affairs.~~]

(2) (a) Subject to Subsection (3), the President of the Senate and Speaker of the House shall appoint their respective members to each subcommittee.

(b) (i) The President of the Senate shall designate one senator in each subcommittee as the Senate chair.

(ii) The Speaker of the House shall designate one representative in each subcommittee as the House chair and one representative in each subcommittee as the House vice chair.

(3) The Retirement and Independent Entities Subcommittee shall have the same members as the Retirement and Independent Entities Committee created in Section 63E-1-201.

(4) (a) A majority of any appropriations subcommittee is a quorum for the transaction of business.

(b) In determining a subcommittee quorum, a majority is at least 50% in one house and more than 50% in the other.

(5) (a) In all decisions of the subcommittees, a majority vote prevails.

(b) A majority vote is at least 50% of the members of one house and more than 50% in the other house in attendance.

LAWS

of the

STATE OF UTAH, 2011

Passed at the
GENERAL SESSION
of the
FIFTY-NINTH LEGISLATURE

Convened at the State Capitol in the City of Salt Lake
January 24, 2011
and Adjourned Sine Die on
March 10, 2011

STATE OF UTAH

OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 2011 General Session of the Fifty-Ninth Legislature of the State of Utah, as they appear of record in the Office of the Lieutenant Governor; and

That the 2011 General Session of the Fifty-Ninth Legislature of the State of Utah convened at the Capitol in Salt Lake City on the 24th of January, 2011, and adjourned on the 10th day of March, 2011.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah at Salt Lake City, this 19th day of July, 2011.

Greg Bell
Lieutenant Governor

CHAPTER 1
H. B. 5
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR BASE BUDGET

Chief Sponsor: Todd E. Kiser
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2010 and ending June 30, 2011 as well as for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill reallocates appropriations among funding sources in fiscal year 2011.

This bill appropriates for fiscal year 2012:

- $90,233,600 from the General Fund;
- $18,503,200 from the Education Fund;
- $494,642,300 from various sources as detailed in this bill.

Other Special Clauses:

Section 1 of this bill takes effect immediately. Section 2 of this bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2010 and ending June 30, 2011. These are additions to amounts previously appropriated for fiscal year 2011.

INSURANCE DEPARTMENT

Item 1

To Insurance Department – Insurance Department Administration

From Dedicated Credits Revenue	(1,611,800)
From General Fund Restricted – Technology Development	784,900
From General Fund Restricted – Criminal Background Check	162,500
From General Fund Restricted – Captive Insurance	664,400

Schedule of Programs:

Administration	(162,500)
Criminal Background Checks	162,500

Item 2

To Insurance Department – Title Insurance Program

From Dedicated Credits Revenue	(75,000)
From General Fund Restricted – Title Licensee	75,000

Section 2. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

DEPARTMENT OF COMMUNITY AND CULTURE

Item 3

To Department of Community and Culture – Administration

From General Fund	3,016,000

Schedule of Programs:

Executive Director's Office	689,200
Information Technology	1,023,100
Administrative Services	1,303,700

Item 4

To Department of Community and Culture – Historical Society

From Dedicated Credits Revenue	80,000

Schedule of Programs:

State Historical Society	80,000

Item 5

To Department of Community and Culture – State History

From General Fund	2,049,400
From Federal Funds	862,500
From Dedicated Credits Revenue	124,000

Schedule of Programs:

Administration	357,700
Research Libraries and Collections	526,600
Public History and Education	385,400
Office of Preservation	1,741,200
History Projects and Grants	25,000

Item 6

To Department of Community and Culture – Division of Arts and Museums

From General Fund	2,543,100
From Federal Funds	775,800
From Dedicated Credits Revenue	406,900

Schedule of Programs:

Administration	679,200
Grants to Non–profits	1,101,800
Community Arts Outreach	1,944,800

Item 7

To Department of Community and Culture – Division of Arts and Museums – Office of Museum Services

From General Fund 270,600
Schedule of Programs:
Office of Museum Services 270,600

Item 8
To Department of Community and Culture – State Library
From General Fund 4,237,600
From Federal Funds 2,150,600
From Dedicated Credits Revenue 2,147,400
Schedule of Programs:
Administration 1,780,000
Blind and Physically Handicapped 2,039,900
Library Development 2,422,100
Library Resources 2,293,600

Item 9
To Department of Community and Culture – Indian Affairs
From General Fund 201,900
From Dedicated Credits Revenue 25,000
Schedule of Programs:
Indian Affairs 226,900

Item 10
To Department of Community and Culture – Housing and Community Development
From General Fund 4,434,000
From Federal Funds 67,491,600
From Dedicated Credits Revenue 4,194,400
From General Fund Restricted – Pamela Atkinson Homeless Account 732,000
From General Fund Restricted – Methamphetamine Housing Reconstruction and Rehabilitation Account 8,600
From Permanent Community Impact 1,312,500
Schedule of Programs:
Community Development Administration 811,200
Community Assistance 14,328,900
Housing Development 1,066,800
Special Housing 145,000
Homeless Committee 5,014,700
HEAT 33,942,500
Weatherization Assistance 13,075,400
Community Services 3,695,500
Commission on Volunteers 5,792,700
Emergency Food Network 300,400

Item 11
To Department of Community and Culture – Community Development Capital Budget
From General Fund Restricted – Mineral Lease 8,142,000
From Permanent Community Impact 94,600,000
From Repayments 28,000,000
Schedule of Programs:
Permanent Community Impact Board 122,600,000
Special Service Districts 8,142,000

Item 12
To Department of Community and Culture – Zoos
From General Fund 908,400
Schedule of Programs:
Zoos 908,400

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Item 13
To Governor's Office of Economic Development – Administration
From General Fund 2,049,300
From Federal Funds 250,000
Schedule of Programs:
Administration 2,299,300

Item 14
To Governor's Office of Economic Development – Office of Tourism
From General Fund 4,017,600
From Transportation Fund 118,000
From Dedicated Credits Revenue 189,000
From General Fund Restricted – Motion Picture Incentive Account 500,000
Schedule of Programs:
Administration 990,700
Operations and Fulfillment 2,581,900
Film Commission 1,252,000

Item 15
To Governor's Office of Economic Development – Business Development
From General Fund 6,035,800
From Federal Funds 300,000
From General Fund Restricted – Industrial Assistance Account 223,500
Schedule of Programs:
Business Creation 2,736,500
Business Growth 2,791,200
Business Recruitment 1,031,600

Item 16
To Governor's Office of Economic Development – Incentive Funds
From General Fund 148,600
From Dedicated Credits Revenue 60,000
Schedule of Programs:
Incentives/Pete Suazo Utah Athletic Commission 208,600

UTAH STATE TAX COMMISSION

Item 17
To Utah State Tax Commission – Tax Administration
From General Fund 23,317,500
From Education Fund 18,503,200
From Transportation Fund 5,857,400
From Federal Funds 501,200
From Dedicated Credits Revenue 15,269,300
From General Fund Restricted – Sales and Use Tax Administration Fees 8,590,900

From General Fund Restricted – Tobacco Settlement Account 76,800
From Transportation Fund Restricted – Uninsured Motorist I.D. 133,800
From Revenue Transfers 136,800
From Beginning Nonlapsing Appropriation Balances 2,913,700
From Closing Nonlapsing Appropriation Balances (1,595,700)
Schedule of Programs:
Administration Division 7,484,500
Auditing Division 10,492,300
Multi-State Tax Compact 233,200
Technology Management 8,899,300
Tax Processing Division 7,549,000
Seasonal Employees 167,200
Tax Payer Services 10,333,100
Property Tax Division 4,217,300
Motor Vehicles 21,306,300
Motor Vehicle Enforcement Division 3,022,700

Item 18
To Utah State Tax Commission – License Plates Production
From Dedicated Credits Revenue 1,692,600
Schedule of Programs:
License Plates Production 1,692,600

Item 19
To Utah State Tax Commission – Rural Health Care Facilities Distribution
From General Fund Restricted – Rural Health Care Facilities Fund 555,000
From Lapsing Balance (336,100)
Schedule of Programs:
Rural Health Care Facilities Distribution 218,900

Item 20
To Utah State Tax Commission – Liquor Profit Distribution
From General Fund Restricted– Alcoholic Beverage Enforcement & Treatment 5,567,200
Schedule of Programs:
Liquor Profit Distribution 5,567,200

UTAH SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY

Item 21
To Utah Science Technology and Research Governing Authority
From General Fund 13,960,800
From Dedicated Credits Revenue 20,700
From Beginning Nonlapsing Appropriation Balances 12,966,000
From Closing Nonlapsing Appropriation Balances (1,777,800)
Schedule of Programs:
Administration 790,100
Technology Outreach 1,949,000
Research Teams 22,430,600

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Item 22
To Department of Alcoholic Beverage Control – Alcoholic Beverage Control
From Liquor Control Fund 27,062,600
Schedule of Programs:
Executive Director 1,795,300
Administration 1,096,500
Operations 1,518,900
Warehouse and Distribution 1,517,900
Stores and Agencies 21,134,000

Item 23
To Department of Alcoholic Beverage Control – Parents Empowered
From Liquor Control Fund 1,473,700
Schedule of Programs:
Parents Empowered 1,473,700

LABOR COMMISSION

Item 24
To Labor Commission
From General Fund 5,461,100
From Federal Funds 2,526,800
From Dedicated Credits Revenue 25,000
From General Fund Restricted – Industrial Accident Restricted Account 2,332,500
From General Fund Restricted – Workplace Safety 1,563,200
From Employers' Reinsurance Fund 73,000
Schedule of Programs:
Administration 1,789,300
Industrial Accidents 1,280,800
Appeals Board 24,000
Adjudication 1,207,700
Boiler, Elevator and Coal Mine Safety Division 1,199,800
Workplace Safety 1,199,500
Anti-Discrimination 1,572,300
Utah Occupational Safety and Health 3,556,900
Building Operations and Maintenance 151,300

Item 25
To Labor Commission – Employers Reinsurance Fund
From Employers' Reinsurance Fund 17,766,000
Schedule of Programs:
Employers Reinsurance Fund 17,766,000

Item 26
To Labor Commission – Uninsured Employers Fund
From Uninsured Employers' Fund 7,070,000
Schedule of Programs:
Uninsured Employers Fund 7,070,000

DEPARTMENT OF COMMERCE

Item 27
To Department of Commerce – Commerce General Regulation

From Federal Funds 644,800
From Dedicated Credits Revenue 1,287,500
From General Fund Restricted – Commerce Service Account 18,249,000
From General Fund Restricted – Commerce Service Fund – Public Utilities Regulatory Fund 4,446,700
From General Fund Restricted – Factory Built Housing Fees 104,700
From General Fund Restricted – Geologist Education and Enforcement Account 10,000
From General Fund Restricted – Nurse Education & Enforcement Account 10,000
From General Fund Restricted – Pawnbroker Operations 129,000
From General Fund Restricted – Utah Housing Opportunity Restricted Account 20,000
From Pass–through 50,000
From Beginning Nonlapsing Appropriation Balances 221,200
From Closing Nonlapsing Appropriation Balances (183,400)
Schedule of Programs:
Administration 3,269,900
Occupational & Professional Licensing 9,032,900
Securities 1,676,800
Consumer Protection 1,557,100
Corporations and Commercial Code 2,312,300
Real Estate 2,122,900
Public Utilities 3,755,800
Committee of Consumer Services 997,500
Building Operations and Maintenance 264,300

Item 28

To Department of Commerce – Building Inspector Training
From Dedicated Credits Revenue 260,000
Schedule of Programs:
Building Inspector Training 260,000

Item 29

To Department of Commerce – Public Utilities Professional & Technical Services
From General Fund Restricted – Commerce Service Fund – Public Utilities Regulatory Fund 150,000
From Beginning Nonlapsing Appropriation Balances 150,000
Schedule of Programs:
Professional & Technical Services 300,000

Item 30

To Department of Commerce – Committee of Consumer Services Professional and Technical Services
From General Fund Restricted – Commerce Service Fund – Public Utilities Regulatory Fund 500,100
From Beginning Nonlapsing Appropriation Balances 590,000
Schedule of Programs:
Professional & Technical Services 1,090,100

FINANCIAL INSTITUTIONS

Item 31

To Financial Institutions – Financial Institutions Administration
From General Fund Restricted – Financial Institutions 5,969,000
Schedule of Programs:
Administration 5,749,000
Building Operations and Maintenance 220,000

INSURANCE DEPARTMENT

Item 32

To Insurance Department – Insurance Department Administration
From General Fund 5,638,800
From Federal Funds 1,000,000
From Dedicated Credits Revenue 2,074,500
From General Fund Restricted – Technology Development 645,700
From General Fund Restricted – Criminal Background Check 165,000
From General Fund Restricted – Captive Insurance 690,000
From Beginning Nonlapsing Appropriation Balances 15,100
Schedule of Programs:
Administration 6,638,800
Relative Value Study 90,000
Insurance Fraud Program 1,999,600
Captive Insurers 690,000
Electronic Commerce Fee 645,700
Criminal Background Checks 165,000

Item 33

To Insurance Department – Comprehensive Health Insurance Pool
From General Fund 8,075,000
From Federal Funds 2,118,900
From Dedicated Credits Revenue 28,159,700
From Beginning Nonlapsing Appropriation Balances 21,808,600
From Closing Nonlapsing Appropriation Balances (13,375,800)
Schedule of Programs:
Comprehensive Health Insurance Pool 46,786,400

Item 34

To Insurance Department – Bail Bond Program
From General Fund Restricted – Bail Bond Surety Administration 23,500
Schedule of Programs:

Bail Bond Program 23,500

Item 35

To Insurance Department - Title Insurance Program

From General Fund 5,200

From General Fund Restricted - Title Licensee 75,000

Schedule of Programs:

Title Insurance Program 80,200

PUBLIC SERVICE COMMISSION

Item 36

To Public Service Commission

From Dedicated Credits Revenue 112,500

From General Fund Restricted - Commerce Service Fund - Public Utilities Regulatory Fund 1,959,500

Schedule of Programs:

Administration 1,944,800

Building Operations and Maintenance 27,200

Energy Independent Evaluator 100,000

Item 37

To Public Service Commission - Speech and Hearing Impaired

From Dedicated Credits Revenue 1,037,600

From Beginning Nonlapsing Appropriation Balances 542,200

From Closing Nonlapsing Appropriation Balances (453,800)

Schedule of Programs:

Speech and Hearing Impaired 1,126,000

Item 38

To Public Service Commission - Universal Telecommunications Support Fund

From Universal Public Telecom Service Fund 4,996,500

From Beginning Nonlapsing Appropriation Balances 2,978,500

From Closing Nonlapsing Appropriation Balances (1,509,300)

Schedule of Programs:

Universal Telecom Service Fund 6,465,700

REVENUE - BUSINESS, ECONOMIC DEVELOPMENT, & LABOR

Item 39

To General Fund

From General Fund Restricted- Alcoholic Beverage Enforcement & Treatment 30,000

From Liquor Control Fund 2,481,400

Schedule of Programs:

General Fund 2,511,400

RESTRICTED REVENUE - BUSINESS, ECONOMIC DEVELOPMENT, & LABOR

Item 40

To Olene Walker Housing Loan Fund

From General Fund 2,242,900

From Federal Funds 4,400,000

Schedule of Programs:

Olene Walker Housing Loan Fund 6,642,900

Item 41

To Permanent Community Impact Fund

From General Fund Restricted - Mineral Lease 58,000,000

From General Fund Restricted - Mineral Bonus 20,900,000

Schedule of Programs:

Permanent Community Impact Fund 78,900,000

Item 42

To General Fund Restricted - Pamela Atkinson Homeless Trust

From General Fund 565,000

Schedule of Programs:

General Fund Restricted - Pamela Atkinson Homeless Trust 565,000

Item 43

To General Fund Restricted - Motion Picture Incentive Fund

From General Fund 500,000

Schedule of Programs:

Motion Picture Incentive Fund 500,000

Item 44

To General Fund Restricted - Rural Health Care Facilities Fund

From General Fund 555,000

Schedule of Programs:

GFR - Rural Health Care Facilities Fund 555,000

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override. Section 2 of this bill takes effect on July 1, 2011.

CHAPTER 2
H.B. 6
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

EXECUTIVE OFFICES AND CRIMINAL JUSTICE BASE BUDGET

Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described;

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $490,629,550 from the General Fund;
- $49,000 from the Education Fund;
- $220,317,800 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

GOVERNOR'S OFFICE

Item 1

To Governor's Office	
From General Fund	3,906,000
From Federal Funds	100,000
From Dedicated Credits Revenue	782,300
From Revenue Transfers	6,000
From Beginning Nonlapsing Appropriation Balances	980,000
From Closing Nonlapsing Appropriation Balances	(1,048,800)
Schedule of Programs:	
Administration	2,353,600
Governor's Residence	354,800
Washington Funding	100,000
Lt. Governor's Office	1,472,800
Governor's Energy Advisor	444,300

Item 2

To Governor's Office – Public Lands Litigation	
From General Fund Restricted – Constitutional Defense	1,000,000
Schedule of Programs:	
Public Lands Litigation	1,000,000

Item 3

To Governor's Office – Emergency Fund	
From Beginning Nonlapsing Appropriation Balances	100,000
From Closing Nonlapsing Appropriation Balances	(100,000)

Item 4

To Governor's Office – Governor's Office of Planning and Budget	
From General Fund	3,227,200
From Dedicated Credits Revenue	75,000
From Revenue Transfers – Within Agency	48,000
From Beginning Nonlapsing Appropriation Balances	1,047,400
From Closing Nonlapsing Appropriation Balances	(1,047,400)
Schedule of Programs:	
Administration	894,200
Planning and Budget Analysis	1,193,700
Demographic and Economic Analysis	719,300
Information Technology	156,100
State and Local Planning	386,900

Item 5

To Governor's Office – Quality Growth Commission – LeRay McAllister Program	
From Beginning Nonlapsing Appropriation Balances	1,800,000
Schedule of Programs:	
LeRay McAllister Critical Land Conservation Program	1,800,000

Item 6

To Governor's Office – Commission on Criminal and Juvenile Justice	
From General Fund	582,200
From Federal Funds	9,877,600
From Dedicated Credits Revenue	92,000
From General Fund Restricted – Law Enforcement Services	619,000
From General Fund Restricted – Criminal Forfeiture Restricted Account	500,000
From General Fund Restricted – Law Enforcement Operations	1,800,000
From Crime Victim Reparations Fund	3,560,600
Schedule of Programs:	
CCJJ Commission	7,624,200
Crime Victim Reparations	7,514,500
Extraditions	314,200
Substance Abuse Advisory Council	128,900
Sentencing Commission	132,300
Gang Reduction Grant Program	291,600
Crime Reduction Assistance Program	500,000
Sexual Exploitation of Children	170,500
Judicial Performance Evaluation Commission	355,200

STATE AUDITOR

Item 7

To State Auditor
From General Fund 3,230,400
From Dedicated Credits Revenue 1,518,700
From Beginning Nonlapsing Appropriation Balances 222,400
From Closing Nonlapsing Appropriation Balances (100,700)
Schedule of Programs:
Administration 345,600
Auditing 4,344,300
State and Local Government 180,900

STATE TREASURER

Item 8

To State Treasurer
From General Fund 874,400
From Dedicated Credits Revenue 528,400
From Unclaimed Property Trust 1,412,300
Schedule of Programs:
Treasury and Investment 1,239,300
Unclaimed Property 1,412,300
Money Management Council 86,400
Financial Assistance 77,100

ATTORNEY GENERAL

Item 9

To Attorney General
From General Fund 23,290,750
From Federal Funds 1,290,700
From Dedicated Credits Revenue 17,417,500
From General Fund Restricted – Tobacco Settlement Account 276,100
From Attorney General Litigation Fund 336,500
From Revenue Transfers – Commission on Criminal and Juvenile Justice 586,100
From Revenue Transfers – Federal 320,900
From Revenue Transfers – Other Agencies 59,900
From Beginning Nonlapsing Appropriation Balances 1,582,900
From Closing Nonlapsing Appropriation Balances (513,700)
Schedule of Programs:
Administration 3,979,800
Child Protection 7,465,800
Children's Justice 1,169,100
Criminal Prosecution 14,975,700
Civil 17,057,250

Item 10

To Attorney General – Contract Attorneys
From Dedicated Credits Revenue 300,000
Schedule of Programs:
Contract Attorneys 300,000

Item 11

To Attorney General – Children's Justice Centers
From General Fund 2,677,000
From Federal Funds 201,500
From Dedicated Credits Revenue 320,700
Schedule of Programs:
Children's Justice Centers 3,199,200

Item 12

To Attorney General – Prosecution Council
From Federal Funds 25,000
From Dedicated Credits Revenue 34,200
From General Fund Restricted – Public Safety Support 586,600
From Revenue Transfers – Commission on Criminal and Juvenile Justice 229,400
Schedule of Programs:
Prosecution Council 875,200

Item 13

To Attorney General – Domestic Violence
From General Fund Restricted – Domestic Violence 78,300
Schedule of Programs:
Domestic Violence 78,300

UTAH DEPARTMENT OF CORRECTIONS

Item 14

To Utah Department of Corrections – Programs and Operations
From General Fund 170,136,500
From Education Fund 49,000
From Federal Funds 424,600
From Dedicated Credits Revenue 4,007,100
From General Fund Restricted – DNA Specimen Account 515,000
From G.F.R. – Interstate Compact for Adult Offender Supervision 29,000
From General Fund Restricted – Prison Telephone Surcharge Account 1,500,000
From Revenue Transfers – Commission on Criminal and Juvenile Justice 120,000
From Revenue Transfers – Other Agencies 207,600
Schedule of Programs:
Department Executive Director 5,922,900
Department Administrative Services 10,891,900
Department Training 1,433,000
Adult Probation and Parole Administration 1,606,400
Adult Probation and Parole Programs 47,532,300
Institutional Operations Administration 2,970,200
Institutional Operations Draper Facility 53,746,800
Institutional Operations Central Utah/Gunnison 34,600,900
Institutional Operations Inmate Placement 2,240,600
Institutional Operations Support Services 4,105,300
Programming Administration 487,200
Programming Treatment 3,119,200
Programming Skill Enhancement 6,310,400
Programming Education 2,021,700

Item 15

To Utah Department of Corrections – Department Medical Services

From General Fund	25,080,300
From Dedicated Credits Revenue	422,200
Schedule of Programs:	
Medical Services	25,502,500

Item 16

To Utah Department of Corrections – Utah Correctional Industries

From Dedicated Credits Revenue	20,999,600
From Closing Nonlapsing Appropriation Balances	(1,235,100)
Schedule of Programs:	
Utah Correctional Industries	19,764,500

Item 17

To Utah Department of Corrections – Jail Contracting

From General Fund	20,125,200
From Federal Funds	50,000
Schedule of Programs:	
Jail Contracting	20,175,200

BOARD OF PARDONS AND PAROLE

Item 18

To Board of Pardons and Parole

From General Fund	3,779,900
From Dedicated Credits Revenue	2,200
Schedule of Programs:	
Board Of Pardons and Parole	3,782,100

DEPARTMENT OF HUMAN SERVICES - DIVISION OF JUVENILE JUSTICE SERVICES

Item 19

To Department of Human Services – Division of Juvenile Justice Services – Programs and Operations

From General Fund	75,115,300
From Federal Funds	2,903,300
From Dedicated Credits Revenue	2,830,000
From Revenue Transfers – Child Nutrition	913,900
From Revenue Transfers – Commission on Criminal and Juvenile Justice	882,900
From Revenue Transfers – Department of Health – Medical Assistance	(1,544,400)
From Revenue Transfers – Within Agency	116,600
Schedule of Programs:	
Administration	4,151,100
Early Intervention Services	11,314,100
Community Programs	23,004,000
Correctional Facilities	21,157,900
Rural Programs	21,223,600
Youth Parole Authority	366,900

JUDICIAL COUNCIL/STATE COURT ADMINISTRATOR

Item 20

To Judicial Council/State Court Administrator – Administration

From General Fund	79,779,600
From Federal Funds	327,500
From Dedicated Credits Revenue	2,873,100
From General Fund Restricted – Dispute Resolution Account	415,300
From General Fund Restricted – Children's Legal Defense	361,500
From General Fund Restricted – Court Reporter Technology	250,000
From General Fund Restricted – Court Security Account	7,556,400
From General Fund Restricted – Court Trust Interest	795,000
From General Fund Restricted – DNA Specimen Account	250,300
From General Fund Restricted – Justice Court Technology, Security & Training	1,105,000
From General Fund Restricted – Non–Judicial Assessment	936,200
From General Fund Restricted – Online Court Assistance	151,000
From General Fund Restricted – State Court Complex Account	300,000
From General Fund Restricted – Substance Abuse Prevention	513,500
From General Fund Restricted – Tobacco Settlement Account	352,800
From Revenue Transfers – Commission on Criminal and Juvenile Justice	578,500
From Revenue Transfers – Other Agencies	279,000
Schedule of Programs:	
Supreme Court	2,497,400
Law Library	718,000
Court of Appeals	3,824,200
District Courts	35,216,500
Juvenile Courts	35,455,500
Justice Courts	1,311,900
Courts Security	7,556,400
Administrative Office	3,765,600
Judicial Education	525,000
Data Processing	5,188,800
Grants Program	765,400

Item 21

To Judicial Council/State Court Administrator – Grand Jury

From General Fund	800
Schedule of Programs:	
Grand Jury	800

Item 22

To Judicial Council/State Court Administrator – Contracts and Leases

From General Fund	15,179,100
From Dedicated Credits Revenue	250,000
From General Fund Restricted – State Court Complex Account	4,400,000

Schedule of Programs:
Contracts and Leases 19,829,100

Item 23
To Judicial Council/State Court Administrator – Jury and Witness Fees
From General Fund 1,530,000
From Dedicated Credits Revenue 10,000
From Closing Nonlapsing Appropriation Balances 600,000
Schedule of Programs:
Jury, Witness, and Interpreter 2,140,000

Item 24
To Judicial Council/State Court Administrator – Guardian ad Litem
From General Fund 4,833,100
From Dedicated Credits Revenue 20,000
From General Fund Restricted – Children's Legal Defense 451,300
From General Fund Restricted – Guardian Ad Litem Services 365,300
Schedule of Programs:
Guardian ad Litem 5,669,700

DEPARTMENT OF PUBLIC SAFETY

Item 25
To Department of Public Safety – Programs & Operations
From General Fund 56,777,000
From Transportation Fund 5,495,500
From Federal Funds 1,939,100
From Dedicated Credits Revenue 13,228,100
From General Fund Restricted – DNA Specimen Account 932,900
From General Fund Restricted – Statewide Unified E–911 Emergency Account 3,891,300
From General Fund Restricted – Fire Academy Support 5,524,900
From General Fund Restricted – Firefighter Support Account 132,000
From General Fund Restricted – Nuclear Oversight 376,900
From General Fund Restricted – Public Safety Honoring Heroes Account 15,500
From General Fund Restricted – Public Safety Support 3,300
From General Fund Restricted – Reduced Cigarette Ignition Propensity & Firefighter Protection Account 75,000
From General Fund Restricted – State Law Enforcement Forfeiture Account 25,000
From General Fund Restricted – Statewide Warrant Operations 568,200
From Transportation Fund – Department of Public Safety Restricted Account 1,419,800
From Revenue Transfers – Commission on Criminal and Juvenile Justice 604,500
From Revenue Transfers – Other Agencies 1,073,800
From Pass–through 3,363,800
From Beginning Nonlapsing Appropriation Balances 346,400
From Lapsing Balance (376,900)
Schedule of Programs:
Department Commissioner's Office 4,735,200
Aero Bureau 822,400
Department Intelligence Center 537,600
Department Grants 3,064,000
Department Fleet Management 502,900
Enhanced 911 Program 3,891,300
CITS Administration 374,500
CITS Bureau of Criminal Identification 10,344,500
CITS Communications 6,975,100
CITS State Crime Labs 3,386,400
CITS State Bureau of Investigation 2,442,200
Highway Patrol – Administration 853,100
Highway Patrol – Field Operations 33,766,100
Highway Patrol – Commercial Vehicle 3,494,800
Highway Patrol – Safety Inspections 2,054,000
Highway Patrol – Federal Projects 1,935,400
Highway Patrol – Protective Services 2,813,900
Highway Patrol – Special Services 3,352,100
Highway Patrol – Special Enforcement 1,451,500
Highway Patrol – Technology Services 749,700
Information Management – Operations 1,887,700
Fire Marshall – Fire Operations 2,399,600
Fire Marshall – Fire Fighter Training 3,582,100

Item 26
To Department of Public Safety – Emergency Services and Homeland Security
From General Fund 451,100
From Federal Funds 35,404,400
From Dedicated Credits Revenue 293,300
From General Fund Restricted – Nuclear Oversight 1,416,400
From Revenue Transfers – Other Agencies 27,800
From Lapsing Balance (1,416,400)
Schedule of Programs:
Emergency Services and Homeland Security 36,176,600

Item 27
To Department of Public Safety – Peace Officers' Standards and Training
From Dedicated Credits Revenue 33,900
From General Fund Restricted – Public Safety Support 3,522,000
Schedule of Programs:
Basic Training 1,762,500
Regional/Inservice Training 714,600
Post Administration 1,078,800

Item 28
To Department of Public Safety – Liquor Law Enforcement

From Beginning Nonlapsing Appropriation Balances 431,500
From Closing Nonlapsing Appropriation Balances (201,200)
Schedule of Programs:
Liquor Law Enforcement 230,300

Item 29
To Department of Public Safety - Driver License
From Federal Funds 1,255,000
From Dedicated Credits Revenue 6,000
From Transportation Fund Restricted - Motorcycle Education 323,200
From Transportation Fund - Department of Public Safety Restricted Account 27,481,000
From Transportation Fund Restricted - Uninsured Motorist I.D. 2,360,100
From Pass-through 68,100
From Beginning Nonlapsing Appropriation Balances 320,200
From Closing Nonlapsing Appropriation Balances (640,400)
Schedule of Programs:
Driver License Administration 3,248,000
Driver Services 16,012,800
Driver Records 8,311,200
Motorcycle Safety 325,100
Uninsured Motorist 2,039,900
DL Federal Grants 1,236,200

Item 30
To Department of Public Safety - Highway Safety
From General Fund 53,700
From Federal Funds 7,138,000
From Transportation Fund - Department of Public Safety Restricted Account 400,600
From Revenue Transfers - Other Agencies 123,400
From Pass-through 140,200
Schedule of Programs:
Highway Safety 7,855,900

Section 2. Effective Date.
This bill takes effect on July 1, 2011.

CHAPTER 3
H. B. 7
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

INFRASTRUCTURE AND GENERAL GOVERNMENT BASE BUDGET

Chief Sponsor: Gage Froerer
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described;
- approves employment levels for internal service funds;
- approves capital acquisition amounts for internal service funds.

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $92,066,100 from the General Fund;
- $38,736,100 from the Education Fund;
- $1,542,253,200 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

DEPARTMENT OF TRANSPORTATION

Item 1

To Department of Transportation - Support Services

From Transportation Fund	26,854,300
From Federal Funds	1,953,000
Schedule of Programs:	
Administrative Services	2,414,000
Risk Management	2,597,700
Building and Grounds	987,500
Human Resources Management	1,258,300
Procurement	1,080,600
Comptroller	2,408,100
Data Processing	9,131,400
Internal Auditor	806,600
Community Relations	597,300
Ports of Entry	7,525,800

Item 2

To Department of Transportation - Engineering Services

From Transportation Fund	16,375,400
From Federal Funds	14,747,700
From Dedicated Credits Revenue	1,150,000
Schedule of Programs:	
Program Development and Research	11,022,400
Preconstruction Administration	1,647,800
Environmental	867,700
Structures	2,708,600
Materials Lab	3,845,100
Engineering Services	2,477,600
Right-of-Way	1,991,600
Research	2,682,500
Construction Management	4,671,900
Civil Rights	357,900

Item 3

To Department of Transportation - Operations/Maintenance Management

From Transportation Fund	126,514,600
From Federal Funds	8,589,600
From Dedicated Credits Revenue	1,281,200
Schedule of Programs:	
Maintenance Administration	1,825,700
Region 1	18,945,100
Region 2	27,917,100
Region 3	18,699,900
Region 4	38,747,000
Seasonal Pools	763,000
Lands & Buildings	5,024,000
Field Crews	10,758,200
Traffic Safety/Tramway	3,510,900
Traffic Operations Center	8,624,200
Maintenance Planning	1,570,300

Item 4

To Department of Transportation - Construction Management

From General Fund	1,470,600
From Transportation Fund	20,579,600
From Transportation Investment Fund of 2005	60,227,400
From Transportation Investment Fund of 2005, One-time	(60,227,400)
From Federal Funds	152,831,400
From Dedicated Credits Revenue	1,550,000
From Designated Sales Tax	26,234,200
From Revenue Transfers - Within Agency	163,400
Schedule of Programs:	
Federal Construction - New	91,523,000
Rehabilitation/Preservation	111,306,200

Item 5

To Department of Transportation - Region Management

From Transportation Fund	21,893,700
From Federal Funds	3,476,400
From Dedicated Credits Revenue	1,232,200
Schedule of Programs:	
Region 1	5,388,600

Region 2	9,520,300
Region 3	4,425,200
Region 4	6,555,900
Richfield	83,600
Price	282,600
Cedar City	346,100

Item 6

To Department of Transportation – Equipment Management	
From Transportation Fund	52,900
From Dedicated Credits Revenue	27,205,800
Schedule of Programs:	
Equipment Purchases	5,022,200
Shops	22,236,500

Item 7

To Department of Transportation – Aeronautics	
From Federal Funds	20,000,000
From Dedicated Credits Revenue	383,600
From Transportation Fund Restricted – Aeronautics Fund	6,904,800
Schedule of Programs:	
Administration	549,300
Airport Construction	23,536,100
Civil Air Patrol	75,000
Aid to Local Airports	2,240,000
Airplane Operations	888,000

Item 8

To Department of Transportation – B and C Roads	
From Transportation Fund	122,243,700
Schedule of Programs:	
B and C Roads	122,243,700

Item 9

To Department of Transportation – Safe Sidewalk Construction	
From Transportation Fund	500,000
Schedule of Programs:	
Sidewalk Construction	500,000

Item 10

To Department of Transportation – Mineral Lease	
From General Fund Restricted – Mineral Lease	65,713,400
Schedule of Programs:	
Mineral Lease Payments	63,244,400
Payment in Lieu	2,469,000

Item 11

To Department of Transportation – Centennial Highway Program	
From Transportation Fund	72,396,500
From Centennial Highway Fund Restricted Account	64,305,300
From Debt Service	(137,915,300)
From Revenue Transfers – Within Agency	6,000,000
From Beginning Nonlapsing Appropriation Balances	21,592,100
From Closing Nonlapsing Appropriation Balances	(68,700)
Schedule of Programs:	
Centennial Highway Program	26,309,900

Item 12

To Department of Transportation – Critical Highway Needs	
From Critical Highway Needs Fund	100,416,400
From Beginning Nonlapsing Appropriation Balances	133,015,200
Schedule of Programs:	
Critical Highway Needs	233,431,600

DEPARTMENT OF ADMINISTRATIVE SERVICES

Item 13

To Department of Administrative Services – Executive Director	
From General Fund	629,900
Schedule of Programs:	
Executive Director	629,900

Item 14

To Department of Administrative Services – Administrative Rules	
From General Fund	360,700
Schedule of Programs:	
DAR Administration	360,700

Item 15

To Department of Administrative Services – DFCM Administration	
From General Fund	2,187,400
From Capital Projects Fund	1,956,000
From Capital Project Fund – Project Reserve	200,000
From Capital Project Fund – Contingency Reserve	82,300
Schedule of Programs:	
DFCM Administration	4,306,500
Governor's Residence	119,200

Item 16

To Department of Administrative Services – State Archives	
From General Fund	2,119,400
From Federal Funds	115,600
From Dedicated Credits Revenue	32,400
Schedule of Programs:	
Archives Administration	823,400
Records Analysis	236,300
Preservation Services	254,200
Patron Services	500,400
Records Services	453,100

Item 17

To Department of Administrative Services – Finance Administration	
From General Fund	5,432,100
From Transportation Fund	450,000
From Dedicated Credits Revenue	1,325,700
From General Fund Restricted – Internal Service Fund Overhead	1,299,600
From Beginning Nonlapsing Appropriation Balances	441,000
Schedule of Programs:	

Finance Director's Office 463,100
Payroll 1,696,700
Payables/Disbursing 1,571,700
Technical Services 906,300
Financial Reporting 1,528,000
Financial Information Systems 2,782,600

Item 18

To Department of Administrative Services - Finance - Mandated
From General Fund 3,000,000
From General Fund Restricted - Economic Incentive Restricted Account 4,540,000
From General Fund Restricted - Land Exchange Distribution Account 15,750,000
Schedule of Programs:
Land Exchange Distribution 15,750,000
Development Zone Partial Rebates 4,540,000
Jail Reimbursement 3,000,000

Item 19

To Department of Administrative Services - Finance - Mandated - OPEB
From General Fund 1,783,700
Schedule of Programs:
Other Post Employment Benefits 1,783,700

Item 20

To Department of Administrative Services - Post Conviction Indigent Defense
From General Fund 33,900
From Beginning Nonlapsing Appropriation Balances 28,300
From Closing Nonlapsing Appropriation Balances 57,800
Schedule of Programs:
Post Conviction Indigent Defense Fund 120,000

Item 21

To Department of Administrative Services - Judicial Conduct Commission
From General Fund 207,200
From Beginning Nonlapsing Appropriation Balances 42,100
From Closing Nonlapsing Appropriation Balances (5,900)
Schedule of Programs:
Judicial Conduct Commission 243,400

Item 22

To Department of Administrative Services - Purchasing
From General Fund 1,070,200
From Dedicated Credits Revenue 203,800
Schedule of Programs:
Purchasing and General Services 1,274,000

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

Item 23

To Department of Administrative Services - Division of Purchasing and General Services
From Dedicated Credits - Intragovernmental Revenue 17,912,300
Schedule of Programs:
ISF - Central Mailing 13,260,100
ISF - Electronic Purchasing 512,200
ISF - Print Services 4,140,000
Budgeted FTE 62.5
Authorized Capital Outlay 3,658,100

Item 24

To Department of Administrative Services - Division of Fleet Operations
From Dedicated Credits - Intragovernmental Revenue 57,613,400
Schedule of Programs:
ISF - Motor Pool 25,565,200
ISF - Fuel Network 30,846,700
ISF - State Surplus Property 1,056,300
ISF - Federal Surplus Property 145,200
Budgeted FTE 38.0
Authorized Capital Outlay 19,936,200

Item 25

To Department of Administrative Services - Risk Management
From Premiums 28,751,900
From Interest Income 456,100
From Restricted Revenue 7,000,000
Schedule of Programs:
ISF - Risk Management Administration 29,208,000
ISF - Workers' Compensation 7,000,000
Budgeted FTE 26.0
Authorized Capital Outlay 500,000

Item 26

To Department of Administrative Services - Division of Facilities Construction and Management - Facilities Management
From Dedicated Credits - Intragovernmental Revenue 27,463,800
Schedule of Programs:
ISF - Facilities Management 27,463,800
Budgeted FTE 141.0
Authorized Capital Outlay 59,000

DEPARTMENT OF TECHNOLOGY SERVICES

Item 27

To Department of Technology Services - Chief Information Officer
From General Fund 530,600
From Dedicated Credits Revenue 115,200
Schedule of Programs:
Chief Information Officer 645,800

Item 28

To Department of Technology Services - Integrated Technology Division
From General Fund 1,223,400
From Federal Funds 750,000
From Dedicated Credits Revenue 1,500,100
From General Fund Restricted - Statewide Unified E-911 Emergency Account 300,000
From Beginning Nonlapsing Appropriation Balances 507,700

Schedule of Programs:
Automated Geographic Reference Center 3,631,200
Statewide Interoperable Communications 650,000

DEPARTMENT OF TECHNOLOGY SERVICES INTERNAL SERVICE FUNDS

Item 29

To Department of Technology Services – Operations
From Dedicated Credits – Intragovernmental Revenue 124,125,400
Schedule of Programs:
Enterprise Technology Division 124,125,400
Budgeted FTE 847.0
Authorized Capital Outlay 9,415,000

CAPITAL BUDGET

Item 30

To Capital Budget – Capital Improvements
From General Fund 20,417,300
From Education Fund 21,571,800
From Capital Project Fund – Project Reserve 12,000,000
Schedule of Programs:
Capital Improvements 53,989,100

STATE BOARD OF BONDING COMMISSIONERS - DEBT SERVICE

Item 31

To State Board of Bonding Commissioners – Debt Service – Debt Service
From General Fund 51,599,700
From Education Fund 17,164,300
From Transportation Investment Fund of 2005 44,531,100
From Centennial Highway Fund 137,663,200
From Dedicated Credits Revenue 42,922,000
From Transportation Fund Restricted – County of First Class State Hwy Fund 20,988,300
From Critical Highway Needs Fund 60,162,100
From Beginning Nonlapsing Appropriation Balances 9,944,500
From Closing Nonlapsing Appropriation Balances (7,145,000)
Schedule of Programs:
Debt Service 377,830,200

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 4
H. B. 8
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

SOCIAL SERVICES BASE BUDGET

Chief Sponsor: David Clark
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described;

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $648,292,900 from the General Fund;
- $15,643,300 from the Education Fund;
- $3,006,451,000 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

DEPARTMENT OF HEALTH

Item 1

To Department of Health – Executive Director's Operations	
From General Fund	4,874,000
From Federal Funds	5,256,000
From Dedicated Credits Revenue	2,977,000
From General Fund Restricted – Cat and Dog Community Spay and Neuter Program Restricted Account	80,000
From General Fund Restricted – Kurt Oscarson Children's Organ Transplant	100,000
From Organ Donation Contribution Fund	113,000
From Revenue Transfers – Within Agency	360,100
Schedule of Programs:	
Executive Director	2,446,900
Center for Health Data	5,358,900
Program Operations	3,583,700
Internal Audit and Program Integrity	2,370,600

Item 2

To Department of Health – Family Health and Preparedness	
From General Fund	14,675,500
From Federal Funds	80,650,500
From Dedicated Credits Revenue	16,949,100
From General Fund Restricted – Autism Treatment Account	50,000
From Revenue Transfers – Human Services	1,000,000
From Revenue Transfers – Public Safety	1,836,600
From Revenue Transfers – Within Agency	4,280,200
From Pass-through	(300,000)
From Beginning Nonlapsing Appropriation Balances	856,400
From Closing Nonlapsing Appropriation Balances	(1,031,200)
Schedule of Programs:	
Director's Office	1,711,500
Maternal and Child Health	62,611,700
Public Health Preparedness	10,727,600
Children with Special Health Care Needs	10,858,500
Emergency Medical Services	5,063,300
Facility Licensure, Certification, and Resident Assessment	4,816,700
Child Care Licensing	21,255,300
Primary Care	1,922,500

Item 3

To Department of Health – Disease Control and Prevention	
From General Fund	7,772,600
From General Fund, One-time	400,000
From Federal Funds	23,860,000
From Dedicated Credits Revenue	8,179,300
From General Fund Restricted – Cancer Research Account	20,000
From General Fund Restricted – Cigarette Tax Restricted Account	3,131,700
From General Fund Restricted – State Lab Drug Testing Account	420,300
From General Fund Restricted – Tobacco Settlement Account	6,258,100
From Transportation Fund – Department of Public Safety Restricted Account	100,000
From Revenue Transfers	52,600
From Revenue Transfers – Administrative Services	100,000
From Revenue Transfers – Human Services	10,000
From Revenue Transfers – Public Safety	42,600
From Revenue Transfers – Within Agency	1,662,500
From Revenue Transfers – Workforce Services	2,344,600
Schedule of Programs:	
Director's Office	1,541,700

Microbiology 4,937,000
Epidemiology 17,422,800
Chemical and Environmental Services 2,084,900
Forensic Toxicology 1,161,900
Laboratory Improvement 1,039,200
Health Promotion 23,196,800
Office of the Medical Examiner 2,970,000

Item 4

To Department of Health - Workforce Financial Assistance
From Beginning Nonlapsing Appropriation Balances 92,000
Schedule of Programs:
Workforce Financial Assistance 92,000

Item 5

To Department of Health - Health Care Financing
From General Fund 3,644,000
From Federal Funds 54,942,600
From Dedicated Credits Revenue 2,242,800
From General Fund Restricted - Nursing Care Facilities Account 585,200
From Revenue Transfers - Human Services 11,099,700
From Revenue Transfers - Intergovernmental 1,231,000
From Revenue Transfers - Within Agency 1,935,500
From Revenue Transfers - Workforce Services 23,616,500
Schedule of Programs:
Director's Office 2,835,900
Department of Workforce Services' Seeded Services 47,164,600
Other Seeded Services 22,004,200
Financial Services 12,044,700
Eligibility Policy 1,680,300
Contracts 2,218,000
Managed Health Care 3,225,700
Medicaid Operations 3,589,200
Coverage and Reimbursement 2,054,100
Long-term Care 2,480,600

Item 6

To Department of Health - Medicaid Management Information System Replacement
From Federal Funds 693,600
Schedule of Programs:
Medicaid Management Information System Replacement 693,600

Item 7

To Department of Health - Medicaid Mandatory Services
From General Fund 204,612,900
From Federal Funds 551,850,900
From Dedicated Credits Revenue 2,166,600
From General Fund Restricted - Nursing Care Facilities Account 17,266,800
From General Fund Restricted - Tobacco Settlement Account 49,300
From Hospital Provider Assessment Special Revenue Fund 2,000,000
From Revenue Transfers 558,900
From Revenue Transfers - Intergovernmental 125,400
From Revenue Transfers - Within Agency 3,127,300
From Revenue Transfers - Workforce Services 7,400
Schedule of Programs:
Inpatient Hospital 206,943,600
Managed Health Care 190,037,600
Nursing Home 143,547,900
Outpatient Hospital 88,523,300
Physician Services 83,292,300
Other Mandatory Services 45,884,000
Crossover Services 12,285,300
Medical Supplies 10,791,400
State-run Primary Care Case Management 460,100

Item 8

To Department of Health - Medicaid Optional Services
From General Fund 104,978,400
From General Fund, One-time 450,000
From Federal Funds 476,738,000
From Dedicated Credits Revenue 97,778,600
From General Fund Restricted - Nursing Care Facilities Account 1,654,300
From Revenue Transfers - Human Services 68,131,100
From Revenue Transfers - Intergovernmental 22,911,900
From Revenue Transfers - Workforce Services 157,500
Schedule of Programs:
Home and Community Based Waiver Services 157,740,600
Capitated Mental Health Services 111,198,500
Pharmacy 156,088,500
Non-service Expenses 109,144,400
Intermediate Care Facilities for the Mentally Retarded 84,331,100
Buy-in/Buy-out 38,994,200
Dental Services 28,861,500
Mental Health Inpatient Hospital 23,750,000
Hospice Care Services 14,835,000
Vision Care 1,913,300
Other Optional Services 45,942,700

Item 9

To Department of Health - Medicaid Sanctions
From Beginning Nonlapsing Appropriation Balances 1,048,900
From Closing Nonlapsing Appropriation Balances (1,048,900)

Item 10

To Department of Health - Children's Health Insurance Program
From General Fund 22,900
From Federal Funds 56,613,000
From Dedicated Credits Revenue 1,804,200

From General Fund Restricted – Tobacco Settlement Account 14,047,500
From Revenue Transfers – Workforce Services 115,400
Schedule of Programs:
Children's Health Insurance Program 72,603,000

Item 11
To Department of Health – Local Health Departments
From General Fund 2,122,400
Schedule of Programs:
Local Health Department Funding 2,122,400

DEPARTMENT OF HUMAN SERVICES

Item 12
To Department of Human Services – Executive Director Operations
From General Fund 6,748,200
From Federal Funds 8,275,400
From Revenue Transfers – Department of Health – Medical Assistance 362,200
From Revenue Transfers – Other Agencies 128,100
From Revenue Transfers – Within Agency 133,700
Schedule of Programs:
Executive Director's Office 1,083,300
Legal Affairs 1,290,900
Information Technology 2,735,100
Fiscal Operations 3,262,600
Human Resources 1,588,000
Local Discretionary Pass-Through 1,202,000
Office of Services Review 1,089,100
Office of Licensing 2,579,000
Utah Council for People with Disabilities 817,600

Item 13
To Department of Human Services – Division of Substance Abuse and Mental Health
From General Fund 71,166,500
From Federal Funds 28,024,800
From Dedicated Credits Revenue 3,409,400
From General Fund Restricted – Intoxicated Driver Rehabilitation 1,500,000
From General Fund Restricted – Tobacco Settlement Account 2,325,400
From Revenue Transfers – Child Nutrition 74,000
From Revenue Transfers – Department of Health – Medical Assistance 12,329,800
From Revenue Transfers – Other Agencies 62,500
Schedule of Programs:
Administration 2,725,600
Community Mental Health Services 2,426,500
Mental Health Centers 24,090,000
Residential Mental Health Services 898,900
State Hospital 51,474,300
State Substance Abuse Services 9,733,200
Local Substance Abuse Services 22,331,500
Driving Under the Influence (DUI) Fines 1,500,000
Drug Offender Reform Act (DORA) 100
Drug Courts 3,712,300

Item 14
To Department of Human Services – Division of Services for People with Disabilities
From General Fund 48,854,900
From Federal Funds 1,415,400
From Dedicated Credits Revenue 2,049,700
From General Fund Restricted – Account for People with Disabilities 100,000
From Revenue Transfers – Department of Health – Medical Assistance 121,935,100
From Revenue Transfers – Other Agencies 535,000
From Beginning Nonlapsing Appropriation Balances 1,300
Schedule of Programs:
Administration 2,980,200
Service Deliver 6,579,700
Utah State Developmental Center 32,287,000
Community Supports Waiver 126,892,600
Acquired Brain Injury Waiver 2,974,700
Physical Disabilities Waiver 1,867,800
Non-waiver Services 1,309,400

Item 15
To Department of Human Services – Office of Recovery Services
From General Fund 12,307,900
From Federal Funds 24,355,600
From Dedicated Credits Revenue 3,137,700
From Revenue Transfers – Department of Health – Medical Assistance 2,176,800
From Revenue Transfers – Other Agencies 143,800
From Revenue Transfers – Within Agency 59,000
Schedule of Programs:
Administration 1,144,500
Financial Services 4,536,100
Electronic Technology 5,829,200
Child Support Services 23,713,200
Children in Care Collections 1,714,400
Attorney General Contract 3,024,800
Medical Collections 2,218,600

Item 16
To Department of Human Services – Division of Child and Family Services
From General Fund 94,544,500
From Federal Funds 49,199,300
From Dedicated Credits Revenue 2,220,400
From General Fund Restricted – Children's Account 400,000
From General Fund Restricted – Domestic Violence 840,700
From Revenue Transfers – Department of Health – Medical Assistance (6,324,600)
From Revenue Transfers – Other Agencies 16,500
From Revenue Transfers – Within Agency 325,000

From Beginning Nonlapsing Appropriation Balances 358,800
From Closing Nonlapsing Appropriation Balances (292,600)
Schedule of Programs:
Administration 3,493,100
Service Delivery 64,788,100
In-Home Services 2,253,500
Out-of-Home Care 30,947,000
Facility-based Services 4,115,500
Minor Grants 4,989,800
Selected Programs 3,129,400
Special Needs 2,176,000
Domestic Violence 6,276,300
Children's Account 400,000
Adoption Assistance 13,524,000
Child Welfare Management Information System 5,195,300

Item 17

To Department of Human Services - Division of Aging and Adult Services
From General Fund 11,224,100
From Federal Funds 8,745,600
From Revenue Transfers - Department of Health - Medical Assistance (615,400)
From Beginning Nonlapsing Appropriation Balances 8,900
Schedule of Programs:
Administration 1,147,000
Local Government Grants - Formula Funds 10,411,800
Non-Formula Funds 777,300
Aging Waiver Services 1,047,400
Aging Alternatives 3,520,500
Adult Protective Services 2,459,200

DEPARTMENT OF WORKFORCE SERVICES

Item 18

To Department of Workforce Services - Administration
From General Fund 2,701,300
From Federal Funds 9,987,200
From Dedicated Credits Revenue 200,000
From Revenue Transfers - Medicaid 500,000
Schedule of Programs:
Administration 13,388,500

Item 19

To Department of Workforce Services - Operations and Policy
From General Fund 51,866,200
From Federal Funds 588,148,100
From Dedicated Credits Revenue 4,392,700
From Revenue Transfers - Medicaid 27,470,700
Schedule of Programs:
Family Employment Program 93,855,200
Child Care 74,429,400
Food Stamps 411,827,600
Employment and Training 17,388,400
Workforce Investment Act 12,941,800
Medical Program 44,978,600
All Other Programs 16,456,700

Item 20

To Department of Workforce Services - General Assistance
From General Fund 4,896,500
Schedule of Programs:
General Assistance 4,896,500

Item 21

To Department of Workforce Services - Unemployment Insurance
From General Fund 165,000
From Federal Funds 22,147,100
From Dedicated Credits Revenue 273,900
From Revenue Transfers - Within Agency 139,300
Schedule of Programs:
Unemployment Insurance 22,725,300

Item 22

To Department of Workforce Services - Unemployment Compensation Fund
From Unemployment Compensation Trust 466,550,000
Schedule of Programs:
Unemployment Compensation Fund 466,550,000

STATE BOARD OF EDUCATION

Item 23

To State Board of Education - State Office of Rehabilitation
From General Fund 265,100
From Education Fund 15,643,300
From Federal Funds 44,200,300
From Dedicated Credits Revenue 1,043,700
From Revenue Transfers 19,300
From Beginning Nonlapsing Appropriation Balances 4,800
From Closing Nonlapsing Appropriation Balances (4,800)
Schedule of Programs:
Executive Director 2,134,200
Blind and Visually Impaired 6,409,600
Rehabilitation Services 40,156,600
Disability Determination 10,028,900
Deaf and Hard of Hearing 2,442,400

REVENUE - SOCIAL SERVICES

Item 24

To General Fund
From Dedicated Credits Revenue 209,000
From General Fund Restricted - Tobacco Settlement Account 850,000
Schedule of Programs:
General Fund 209,000
General Fund, One-time 850,000

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 5
H. B. 9
Passed February 1, 2011
Approved February 16, 2011
Effective July 1, 2011

NATIONAL GUARD, VETERANS' AFFAIRS, AND LEGISLATURE BASE BUDGET

Chief Sponsor: Melvin R. Brown
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal years beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies; and
- provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $25,336,200 from the General Fund;
- $32,236,800 from various sources as detailed in this bill.

Other Special Clauses:

This bill take effect July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

UTAH NATIONAL GUARD

Item 1

To Utah National Guard	
From General Fund	4,666,600
From Federal Funds	31,306,400
From Dedicated Credits Revenue	30,000
From Revenue Transfers	(140,100)
Schedule of Programs:	
Administration	1,077,900
Armory Maintenance	34,785,000

DEPARTMENT OF VETERANS' AFFAIRS

Item 2

To Department of Veterans' Affairs – Veterans' Affairs	
From General Fund	782,500
From Federal Funds	121,600
From Dedicated Credits Revenue	186,800
Schedule of Programs:	
Administration	557,300
Cemetery	294,500
Nursing Home	239,100

CAPITOL PRESERVATION BOARD

Item 3

To Capitol Preservation Board	
From General Fund	2,848,200
From Dedicated Credits Revenue	557,000
From Beginning Nonlapsing Appropriation Balances	1,454,000
From Closing Nonlapsing Appropriation Balances	(1,453,900)
Schedule of Programs:	
Capitol Preservation Board	3,405,300

LEGISLATURE

Item 4

To Legislature – Senate	
From General Fund	1,597,500
Schedule of Programs:	
Administration	1,533,600
Dues to National Conference of State Legislatures	37,200
Dues to Council of State Governments	26,700

Item 5

To Legislature – House of Representatives	
From General Fund	3,089,200
Schedule of Programs:	
Administration	2,958,300
Dues to National Conference of State Legislatures	76,300
Dues to Council of State Governments	54,600

Item 6

To Legislature – Office of the Legislative Auditor General	
From General Fund	2,879,700
Schedule of Programs:	
Administration	2,879,700

Item 7

To Legislature – Office of the Legislative Fiscal Analyst	
From General Fund	2,448,400
Schedule of Programs:	
Administration and Research	2,448,400

Item 8

To Legislature – Legislative Printing	
From General Fund	472,000
From Dedicated Credits Revenue	175,000
Schedule of Programs:	
Administration	647,000

Item 9

To Legislature – Office of Legislative Research and General Counsel	
From General Fund	6,463,900
Schedule of Programs:	
Administration	6,463,900

Item 10

To Legislature – Office of Legislative Research and General Counsel – Tax Review Commission

From General Fund	42,000
Schedule of Programs:	
Tax Review Commission	42,000

Item 11

To Legislature – Office of Legislative Research and General Counsel – Constitutional Revision Commission

From General Fund	46,200
Schedule of Programs:	
Constitutional Revision Commission	46,200

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 6
H. B. 41
Passed February 4, 2011
Approved February 16, 2011
Effective February 16, 2011

STATE CAPITOL PRESERVATION BOARD FEE REVISIONS

Chief Sponsor: Neal B. Hendrickson
Senate Sponsor: Gene Davis

LONG TITLE

General Description:

This bill amends the State Capitol Preservation Board fee schedule for the current fiscal year.

Highlighted Provisions:

This bill:

- establishes rental rates for State Capitol facilities during the 2011 General Session of the Utah State Legislature.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Fee schedule.

(1) As used in this section, "an event related to the general session of the Legislature" means an event held for the primary purpose of:

(a) discussing public policy germane to the legislative session; or

(b) meeting with a legislator.

(2) Notwithstanding the fees and rates for the State Capitol Preservation Board contained in Laws of Utah 2010, Chapter 408, Section 3, the fees and rates contained in this section for an event related to the general session of the Legislature are established under Title 63J, Chapter 1, Budgetary Procedures Act, for fiscal year ending June 30, 2011.

(3) During the hours of 7 a.m. to 5:30 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is on a date on or between January 24, 2011, and March 10, 2011, the rental rate is $0 for:

(a) Room 8110 or Room 1112 in the State Office Building; or

(b) Room 130, Room 170, or Room 210 in the State Capitol.

(4) During the hours of 7 a.m. to 11 a.m. and 1:30 p.m. to 5:30 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is on a date on or between January 24, 2011, and March 10, 2011, the rental rate is $0 for the following rooms located in the Senate Building:

(a) Kletting Room;

(b) Olmstead Room;

(c) Spruce Room;

(d) Beehive Room;

(e) Seagull Room; and

(f) Copper Room.

(5) During the hours of 11 a.m. to 1:30 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is on a date on or between January 24, 2011, and March 10, 2011, the rental rate is $0 for the following rooms located in the Senate Building if the renter uses a preferred caterer to provide food services during the room rental or provides evidence that attendees have purchased food from a preferred caterer:

(a) Kletting Room;

(b) Olmstead Room;

(c) Spruce Room;

(d) Beehive Room;

(e) Seagull Room; and

(f) Copper Room.

(6) (a) During the hours of 7 a.m. to 11 a.m. and 1:30 p.m. to 5:30 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is on a date on or between January 24, 2011, and March 10, 2011, the State Office Building Auditorium has the following rental rates:

(i) $50 per hour, if the renter is a non-profit organization; and

(ii) $100 per hour, if the renter is a for profit organization.

(b) During the hours of 11 a.m. to 1:30 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is on a date on or between January 24, 2011, and March 10, 2011, the State Office Building Auditorium has the following rental rates:

(i) $0, if the renter:

(A) uses a preferred caterer to provide food services during the room rental; or

(B) provides evidence that attendees have purchased food from a preferred caterer;

(ii) $50 per hour, if the renter:

(A) is a non-profit organization; and

(B) does not provide evidence that meals served in the auditorium were purchased from a preferred caterer; and

(iii) $100 per hour if the renter:

(A) is a for profit organization; and

(B) does not provide evidence that meals served in the auditorium were purchased from a preferred caterer.

(7) On a date on or between January 24, 2011, and March 10, 2011, the State Capitol Board Room has the following rental rates:

(a) $75 per hour for a non-profit organization; and

(b) $150 per hour for a for profit organization.

(8) During the hours of 7 a.m. to 5:30 p.m. on a date on or between January 24, 2011, and March 10, 2011, there is a rental rate of $0 for the following:

(a) the Capitol Rotunda; and

(b) the Hall of Governors.

(9) (a) The State Capitol Preservation Board may establish the maximum amount of time a person may use a facility listed in this section at the rental rate established in this section.

(b) A person using a facility listed in this section in excess of the time established by rule shall pay the rental rate established by Laws of Utah 2010, Chapter 408, Section 3.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 7
S. B. 1
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

PUBLIC EDUCATION BASE BUDGET

Chief Sponsor: D. Chris Buttars
House Sponsor: Merlynn T. Newbold

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of public education for the fiscal year beginning July 1, 2011, and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of state education agencies;
- provides appropriations for the use and support of school districts and charter schools;
- sets the value of the weighted pupil unit at $2,577 for fiscal year 2011-12; and
- sets the estimated minimum basic tax rate at .001628 for fiscal year 2011-12.

Monies Appropriated in this Bill:

This bill appropriates for fiscal year 2011-12:

- $3,211,800 from the General Fund;
- $19,000,000 from the Uniform School Fund;
- $2,092,684,312 from the Education Fund; and
- $935,823,973 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

53A-17a-105, as repealed and reenacted by Laws of Utah 2010, Chapter 399
53A-17a-105.5, as enacted by Laws of Utah 2010, Chapter 303
53A-17a-114, as last amended by Laws of Utah 2007, Chapter 372
53A-17a-135, as last amended by Laws of Utah 2010, Chapter 3

ENACTS:

53A-17a-164, Utah Code Annotated 1953
53A-17a-165, Utah Code Annotated 1953

REPEALS:

53A-15-601, as last amended by Laws of Utah 1997, Chapter 219
53A-15-701, as last amended by Laws of Utah 2002, Chapter 210
53A-17a-108, as last amended by Laws of Utah 2010, Chapters 3 and 399
53A-17a-120, as last amended by Laws of Utah 2010, Chapter 3
53A-17a-121, as last amended by Laws of Utah 2010, Chapter 3
53A-17a-123.5, as last amended by Laws of Utah 2010, Chapter 3
53A-17a-160, as enacted by Laws of Utah 2008, Chapter 397
53A-17a-161, as enacted by Laws of Utah 2008, Chapter 397

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 53A-17a-105 is amended to read:

53A-17a-105. Powers and duties of State Board of Education to adjust Minimum School Program allocations.

(1) Except as provided in Subsection (2) or (4), if the number of weighted pupil units in a program is underestimated, the State Board of Education shall reduce the value of the weighted pupil unit in that program so that the total amount paid for the program does not exceed the amount appropriated for the program.

(2) If the number of weighted pupil units in a program is overestimated, the State Board of Education shall spend excess monies appropriated for the following purposes giving priority to the purpose described in Subsection (2)(a):

(a) to support the value of the weighted pupil unit in a program within the basic state-supported school program in which the number of weighted pupil units is underestimated;

(b) to support the state guarantee per weighted pupil unit provided under the voted leeway program established in Section 53A-17a-133 or the board-approved leeway program established in Section 53A-17a-134, if:

(i) local contributions to the voted leeway program or board-approved leeway program are overestimated; or

(ii) the number of weighted pupil units within school districts qualifying for a guarantee is underestimated;

(c) to support the state supplement to local property taxes allocated to charter schools, if the state supplement is less than the amount prescribed by Subsection 53A-1a-513(4); or

[~~(d) for charter school administrative costs, if the appropriation for charter school administrative costs is insufficient to provide the amount per student prescribed in Subsection 53A-17a-108(2)(a); or~~]

[~~(c)~~] (d) to support a school district with a loss in student enrollment as provided in Section 53A-17a-139.

(3) If local contributions from the minimum basic tax rate imposed under Section 53A-17a-135 are overestimated, the State Board of Education shall reduce the value of the weighted pupil unit for all programs within the basic state-supported school program so the total state contribution to the basic state-supported school program does not exceed the amount of state funds appropriated.

(4) If local contributions from the minimum basic tax rate imposed under Section 53A-17a-135 are

underestimated, the State Board of Education shall:

(a) spend the excess local contributions for the purposes specified in Subsection (2), giving priority to supporting the value of the weighted pupil unit in programs within the basic state-supported school program in which the number of weighted pupil units is underestimated; and

(b) reduce the state contribution to the basic state-supported school program so the total cost of the basic state-supported school program does not exceed the total state and local funds appropriated to the basic state-supported school program plus the local contributions necessary to support the value of the weighted pupil unit in programs within the basic state-supported school program in which the number of weighted pupil units is underestimated.

(5) Except as provided in Subsection (2) or (4), the State Board of Education shall reduce the guarantee per weighted pupil unit provided under the voted leeway program established in Section 53A-17a-133 or board-approved leeway program established in Section 53A-17a-134, if:

(a) local contributions to the voted leeway program or board-approved leeway program are overestimated; or

(b) the number of weighted pupil units within school districts qualifying for a guarantee is underestimated.

(6) [~~Monies~~] Money appropriated to the State Board of Education [~~are~~] is nonlapsing.

(7) The State Board of Education shall report actions taken by the board under this section to the Office of the Legislative Fiscal Analyst and the Governor's Office of Planning and Budget.

Section 2. Section 53A-17a-105.5 is amended to read:

53A-17a-105.5. Flexibility in the use of program funds.

(1) As used in this section, "qualifying program" means:

[~~(a) the at-risk flow through program created in Section 53A-17a-121;~~]

[~~(b) the homeless and disadvantaged minority students program created in Section 53A-17a-121;~~]

[~~(c) the gifted and talented program created in Section 53A-17a-120;~~]

[~~(d) the advanced placement program created in Section 53A-15-101; and~~]

(a) the Enhancement for At-Risk Students Program created in Section 53A-17a-164;

(b) the Enhancement for Accelerated Students Program created in Section 53A-17a-165; and

[~~(e)~~] (c) the concurrent enrollment program created in Section 53A-15-101.

(2) If a school district or charter school receives an allocation of state funds for a qualifying program that is less than $10,000, the school district or charter school may:

(a) (i) combine the funds with one or more qualifying program fund allocations each of which is less than $10,000; and

(ii) use the combined funds in accordance with the program requirements for any of the qualifying programs that are combined; or

(b) (i) transfer the funds to a qualifying program for which the school district or charter school received an allocation of funds that is greater than or equal to $10,000; and

(ii) use the combined funds in accordance with the program requirements for the qualifying program to which the funds are transferred.

Section 3. Section 53A-17a-114 is amended to read:

53A-17a-114. Career and technical education program alternatives.

[~~(1)~~] If a school district determines that a secondary student's career and technical education goals are better achieved at a regional applied technology college created under Title 53B, Chapter 2a, Utah College of Applied Technology, the student may attend that institution.

[~~(2) Students served under this section in a regional applied technology college shall continue to be counted in the regular school program average daily membership of the sending school district.~~]

Section 4. Section 53A-17a-135 is amended to read:

53A-17a-135. Minimum basic tax rate -- Certified revenue levy.

(1) (a) In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of the basic program, each school district shall impose a minimum basic tax rate per dollar of taxable value that generates [~~$273,950,764~~] $284,221,713 in revenues statewide.

(b) The preliminary estimate for the [~~2010-11~~] 2011-12 minimum basic tax rate is [~~.001513~~] .001628.

(c) The State Tax Commission shall certify on or before June 22 the rate that generates [~~$273,950,764~~] $284,221,713 in revenues statewide.

(d) If the minimum basic tax rate exceeds the certified revenue levy as defined in Section 53A-17a-103, the state is subject to the notice requirements of Section 59-2-926.

(2) (a) The state shall contribute to each district toward the cost of the basic program in the district that portion which exceeds the proceeds of the levy authorized under Subsection (1).

(b) In accord with the state strategic plan for public education and to fulfill its responsibility for

the development and implementation of that plan, the Legislature instructs the State Board of Education, the governor, and the Office of Legislative Fiscal Analyst in each of the coming five years to develop budgets that will fully fund student enrollment growth.

(3) (a) If the proceeds of the levy authorized under Subsection (1) equal or exceed the cost of the basic program in a school district, no state contribution shall be made to the basic program.

(b) The proceeds of the levy authorized under Subsection (1) which exceed the cost of the basic program shall be paid into the Uniform School Fund as provided by law.

Section 5. Section 53A-17a-164 is enacted to read:

53A-17a-164. Enhancement for At-Risk Students Program.

(1) The State Board of Education shall distribute money appropriated for the Enhancement for At-Risk Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(2) In establishing a distribution formula under Subsection (1), the State Board of Education shall use the following criteria:

(a) low performance on U-PASS tests;

(b) poverty;

(c) mobility; and

(d) limited English proficiency.

(3) A school district or charter school shall use money distributed under this section to improve the academic achievement of students who are at risk of academic failure.

(4) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for At-Risk Students Program and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program.

Section 6. Section 53A-17a-165 is enacted to read:

53A-17a-165. Enhancement for Accelerated Students Program.

(1) The State Board of Education shall distribute money appropriated for the Enhancement for Accelerated Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(2) A distribution formula adopted under Subsection (1) may include an allocation of money for:

(a) advanced placement courses;

(b) gifted and talented programs, including professional development for teachers of high ability students; and

(c) International Baccalaureate programs.

(3) No more than 1.5% of the appropriation for the Enhancement for Accelerated Students Program may be allowed for International Baccalaureate programs.

(4) A school district or charter school shall use money distributed under this section to enhance the academic growth of students whose academic achievement is accelerated.

(5) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for Accelerated Students Program and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program.

Section 7. Repealer.

This bill repeals:

Section 53A-15-601, Appropriation for program -- Program requirements -- Distribution of funds to school districts.

Section 53A-15-701, Highly impacted schools.

Section 53A-17a-108, Weighted pupil units for small school district administrative costs -- Appropriation for charter school administrative costs.

Section 53A-17a-120, Appropriation for accelerated learning programs.

Section 53A-17a-121, Appropriation for at-risk programs.

Section 53A-17a-123.5, Interventions for Student Success Block Grant Program -- State contribution.

Section 53A-17a-160, High-ability Student Initiative Program.

Section 53A-17a-161, English Language Learner Family Literacy Centers Program -- Report.

Section 8. Appropriations for state education agencies, school districts, and charter schools -- Value of weighted pupil unit.

(1) Under the terms and conditions of Title 63J, Budgeting, as applicable, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or fund accounts indicated for distribution to state education agencies, school districts, and charter schools for the fiscal year beginning July 1, 2011, and ending June 30, 2012.

(2) The value of the weighted pupil unit (WPU) for fiscal year 2011-12 is established at $2,577.

Basic School Program

Item 1 To Basic School Program

From Uniform School Fund $19,000,000
From Education Fund $1,661,176,424
From Local Revenue $284,221,713
From Beginning Nonlapsing Appropriation Balances $15,682,810
From Closing Nonlapsing Appropriation Balances ($15,682,810)
Schedule of Programs:
Kindergarten (27,018 WPUs) $69,625,386
Grades 1 - 12 (523,304 WPUs) $1,348,554,408
Necessarily Existent Small Schools(7,649 WPUs) $19,711,473
Professional Staff (48,886 WPUs) $125,979,222
Special Education - Add-on (65,190 WPUs) $167,994,630
Special Education - Pre-school (9,188 WPUs) $23,677,476
Special Education - Self-contained (14,146 WPUs) $36,454,242
Special Education - Extended Year (403 WPUs) $1,038,531
Special Education - State Programs (1,822 WPUs) $4,695,294
Career & Technical Ed District Add-on (27,907 WPUs) $71,916,339
Class Size Reduction (36,768 WPUs) $94,751,136

The Legislature intends that the State Board of Education allocate $1,222,600 from the appropriation to the Career & Technical Education District Add-on Program to support summer Career & Technical Education Agriculture programs.

Related to Basic Programs

Item 2 To Related to Basic Programs

From Education Fund $279,913,840
From Uniform School Fund Restricted - Interest and Dividends Account $20,000,000
From Beginning Nonlapsing Appropriation Balances $10,825,698
From Closing Nonlapsing Appropriation Balances ($10,825,698)
Schedule of Programs:
To and From School - Pupil Transportation $2,584,400
Enhancement for At-Risk Students $22,432,273
Youth in Custody $18,321,100
Enhancement for Accelerated Students $3,979,881
Concurrent Enrollment $8,531,186
School LAND Trust Program $20,000,000
Charter School Local Replacement $67,258,900
Educator Salary Adjustments $152,104,700
USFR Teacher Salary Supplement Restricted Account $3,626,000
Library Books & Electronic Resources $100,000
Critical Languages & Dual Immersion $975,400

The Legislature intends that the State Board of Education allocate $2,584,400 from the appropriation for To and From School - Pupil Transportation to support transportation costs at the Utah Schools for the Deaf and the Blind.

Voted and Board Leeway Programs

Item 3 To Voted and Board Leeway Programs

From Education Fund $81,292,848
From Local Revenue $306,112,460
From Beginning Nonlapsing Appropriation Balances $4,793,770
From Closing Nonlapsing Appropriation Balances ($4,793,770)
Schedule of Programs:
Voted Leeway $297,260,811
Board Leeway $75,144,497
Board Leeway - Reading Improvement $15,000,000

School Building Programs

Item 4 To School Building Programs

From Education Fund $14,499,700
Schedule of Programs:
Capital Outlay Foundation Program $12,610,900
Capital Outlay Enrollment Growth Program $1,888,800

State Board of Education

Item 5 To State Board of Education - State Office of Education

From Education Fund $17,593,000
From Federal Funds $162,161,000
From Dedicated Credits Revenue $5,896,200
From General Fund Restricted - Mineral Lease $2,884,000
From General Fund Restricted - Land Exchange Distribution Account $302,400
From General Fund Restricted - Substance Abuse Prevention $497,200
From Uniform School Fund Restricted - Interest and Dividends Account $410,400
From Revenue Transfers $678,900
From Beginning Nonlapsing Appropriation Balances $12,360,800

From Closing Nonlapsing Appropriation Balances ($12,360,800)
From Lapsing Balance ($3,900)
Schedule of Programs:
Board of Education - Administration $1,607,000
Student Achievement $185,198,800
Data and Business Services $1,533,000
Law, Legislation, and Educational Services $2,080,400

Item 6 To State Board of Education - Utah State Office of Education - Initiative Programs

From General Fund $3,211,800
From Education Fund $7,119,400
From Beginning Nonlapsing Appropriation Balances $911,300
From Closing Nonlapsing Appropriation Balances ($911,300)
Schedule of Programs:
Contracts and Grants $10,331,200

Item 7 To State Board of Education - State Charter School Board

From Education Fund $575,800
From Federal Funds $5,106,100
Schedule of Programs:
State Charter School Board $5,681,900

Item 8 To State Board of Education - Educator Licensing Professional Practices

From Uniform School Fund Restricted - Professional Practices $1,469,900
From Lapsing Balance ($203,800)
Schedule of Programs:
Educator Licensing $1,266,100

Item 9 To State Board of Education - State Office of Education - Child Nutrition

From Education Fund $139,500
From Federal Funds $114,327,500
From Dedicated Credits Revenue $21,613,100
From Beginning Nonlapsing Appropriation Balances $9,900
From Closing Nonlapsing Appropriation Balances ($9,900)
Schedule of Programs:
Child Nutrition $136,080,100

Item 10 To State Board of Education - Fine Arts Outreach

From Education Fund $2,786,800
Schedule of Programs:
Professional Outreach Programs $2,738,100
Subsidy Program $48,700

Item 11 To State Board of Education - State Office of Education - Educational Contracts

From Education Fund $3,137,800
Schedule of Programs:
Youth Center $1,153,200
Corrections Institutions $1,984,600

Item 12 To State Board of Education - Science Outreach

From Education Fund $1,695,500
From Beginning Nonlapsing Appropriation Balances $46,400
From Closing Nonlapsing Appropriation Balances ($46,400)
Schedule of Programs:
Informal Science Education Enhancement $1,278,400
Science Enhancement $417,100

Item 13 To State Board of Education - Utah Schools for the Deaf and the Blind

From Education Fund $22,753,700
From Federal Funds $92,000
From Dedicated Credits Revenue $1,551,700
From Revenue Transfers $4,510,800
Schedule of Programs:
Instructional Services $14,973,800
Support Services $13,934,400

State Board of Education Indirect Cost Pool Internal Service Funds

Item 14 To State Board of Education Indirect Cost Pool - Indirect Cost Pool

From Dedicated Credits - Intragovernmental Revenue $4,196,300
Schedule of Programs:
ISF - Superintendent Indirect Cost Pool $4,196,300
Budgeted FTE 41.5

Section 9. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 8
S. B. 7
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

HIGHER EDUCATION BASE BUDGET

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of higher education for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of higher education agencies and institutions;
- provides appropriations for the use and support of the Utah Education Network;
- provides appropriations for the use and support of the Utah Medical Education Council;
- provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $450,953,800 from the General Fund;
- $237,536,000 from the Education Fund;
- $540,982,700 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

UNIVERSITY OF UTAH

Item 1

To University of Utah – Education and General	
From General Fund	181,395,800
From Education Fund	3,859,600
From Dedicated Credits Revenue	161,000,000
From Dedicated Credits – Land Grant Management	502,100
From General Fund Restricted – Cigarette Tax Restricted Account	4,284,500
From General Fund Restricted – Tobacco Settlement Account	4,000,000
From Beginning Nonlapsing Appropriation Balances	5,140,500
From Closing Nonlapsing Appropriation Balances	(5,140,500)
Schedule of Programs:	
Education and General	355,042,000

Item 2

To University of Utah – Educationally Disadvantaged	
From General Fund	587,300
From Education Fund	61,800
From Revenue Transfers – Commission on Criminal and Juvenile Justice	34,500
From Beginning Nonlapsing Appropriation Balances	150,800
From Closing Nonlapsing Appropriation Balances	(150,800)
Schedule of Programs:	
Educationally Disadvantaged	683,600

Item 3

To University of Utah – School of Medicine	
From General Fund	141,100
From Education Fund	19,588,000
From Dedicated Credits Revenue	13,877,000
From Beginning Nonlapsing Appropriation Balances	2,085,500
From Closing Nonlapsing Appropriation Balances	(2,085,500)
Schedule of Programs:	
School of Medicine	33,606,100

Item 4

To University of Utah – University Hospital	
From General Fund	3,681,300
From Education Fund	659,700
From Dedicated Credits – Land Grant Management	455,800
From Beginning Nonlapsing Appropriation Balances	200,500
From Closing Nonlapsing Appropriation Balances	(200,500)
Schedule of Programs:	
University Hospital	4,260,300
Miners' Hospital	536,500

Item 5

To University of Utah – Regional Dental Education Program	
From General Fund	461,400
From Education Fund	41,700
From Dedicated Credits Revenue	266,000
From Beginning Nonlapsing Appropriation Balances	26,000
From Closing Nonlapsing Appropriation Balances	(26,000)
Schedule of Programs:	
Regional Dental Education Program	769,100

Item 6

To University of Utah – Public Service	
From General Fund	1,029,800
From Education Fund	1,670,200
From Beginning Nonlapsing Appropriation Balances	10,400
From Closing Nonlapsing Appropriation Balances	(10,400)
Schedule of Programs:	

Seismograph Stations	657,600
Museum of Natural History	1,933,900
State Arboretum	108,500

Item 7

To University of Utah – Statewide TV Administration	
From General Fund	2,003,400
From Education Fund	280,400
From Beginning Nonlapsing Appropriation Balances	665,600
From Closing Nonlapsing Appropriation Balances	(665,600)
Schedule of Programs:	
Public Broadcasting	2,283,800

Item 8

To University of Utah – Poison Control Center	
From Dedicated Credits Revenue	1,581,000
From Beginning Nonlapsing Appropriation Balances	557,200
From Closing Nonlapsing Appropriation Balances	(557,200)
Schedule of Programs:	
Poison Control Center	1,581,000

Item 9

To University of Utah – Utah Tele-Health Network	
From General Fund	434,100
From Beginning Nonlapsing Appropriation Balances	400,700
From Closing Nonlapsing Appropriation Balances	(400,700)
Schedule of Programs:	
Utah Tele-Health Network	434,100

Item 10

To University of Utah – Center on Aging	
From Beginning Nonlapsing Appropriation Balances	11,300
From Closing Nonlapsing Appropriation Balances	(11,300)

Item 11

To University of Utah – Rocky Mountain Center for Occupational and Environmental Health	
From General Fund Restricted – Workplace Safety	150,000
From Beginning Nonlapsing Appropriation Balances	(1,500)
From Closing Nonlapsing Appropriation Balances	1,500
Schedule of Programs:	
Center for Occupational and Environmental Health	150,000

UTAH STATE UNIVERSITY

Item 12

To Utah State University – Education and General	
From General Fund	90,633,900
From Education Fund	6,775,800
From Dedicated Credits Revenue	67,433,100
From Dedicated Credits – Land Grant Management	150,600
From Beginning Nonlapsing Appropriation Balances	957,600
From Closing Nonlapsing Appropriation Balances	(957,600)
Schedule of Programs:	
Education and General	164,993,400

Item 13

To Utah State University – CEU – Education and General	
From General Fund	49,300
From Education Fund	11,957,400
From Dedicated Credits Revenue	2,607,800
From Beginning Nonlapsing Appropriation Balances	739,100
From Closing Nonlapsing Appropriation Balances	(739,100)
Schedule of Programs:	
CEU – Education and General	14,614,500

Item 14

To Utah State University – Educationally Disadvantaged	
From General Fund	215,300
From Education Fund	21,100
From Beginning Nonlapsing Appropriation Balances	9,800
From Closing Nonlapsing Appropriation Balances	(9,800)
Schedule of Programs:	
Educationally Disadvantaged	236,400

Item 15

To Utah State University – CEU – Educationally Disadvantaged	
From General Fund	103,100
From Education Fund	1,900
From Beginning Nonlapsing Appropriation Balances	2,400
From Closing Nonlapsing Appropriation Balances	(2,400)
Schedule of Programs:	
CEU – Educationally Disadvantaged	105,000

Item 16

To Utah State University – CEU – Career and Technical Education	
From General Fund	370,700
From Education Fund	960,200
From Dedicated Credits Revenue	45,000
Schedule of Programs:	
CEU – Career and Technical Education	1,375,900

Item 17

To Utah State University – Uintah Basin Regional Campus	
From General Fund	2,229,700
From Education Fund	1,553,000
From Dedicated Credits Revenue	1,812,000
From Beginning Nonlapsing Appropriation Balances	184,400

From Closing Nonlapsing Appropriation Balances (184,400)
Schedule of Programs:
Uintah Basin Regional Campus 5,594,700

Item 18
To Utah State University – Southeastern Continuing Education Center
From General Fund 602,800
From Education Fund 89,900
From Dedicated Credits Revenue 673,200
From Beginning Nonlapsing Appropriation Balances 42,200
From Closing Nonlapsing Appropriation Balances (42,200)
Schedule of Programs:
Southeastern Continuing Education Center 1,365,900

Item 19
To Utah State University – Brigham City Regional Campus
From General Fund 1,031,500
From Education Fund 1,436,100
From Dedicated Credits Revenue 10,940,600
From Beginning Nonlapsing Appropriation Balances 118,900
From Closing Nonlapsing Appropriation Balances (118,900)
Schedule of Programs:
Brigham City Regional Campus 13,408,200

Item 20
To Utah State University – Tooele Regional Campus
From General Fund 979,100
From Education Fund 1,406,400
From Dedicated Credits Revenue 5,874,800
From Beginning Nonlapsing Appropriation Balances 451,700
From Closing Nonlapsing Appropriation Balances (451,700)
Schedule of Programs:
Tooele Regional Campus 8,260,300

Item 21
To Utah State University – Water Research Laboratory
From General Fund 1,267,100
From Education Fund 396,300
From General Fund Restricted – Mineral Lease 1,745,800
From General Fund Restricted – Land Exchange Distribution Account 298,800
From Beginning Nonlapsing Appropriation Balances 5,092,100
From Closing Nonlapsing Appropriation Balances (5,092,100)
Schedule of Programs:
Water Research Laboratory 3,708,000

Item 22
To Utah State University – Agriculture Experiment Station
From General Fund 566,100
From Education Fund 10,998,000
From Federal Funds 1,813,800
From Beginning Nonlapsing Appropriation Balances 3,813,200
From Closing Nonlapsing Appropriation Balances (3,813,200)
Schedule of Programs:
Agriculture Experiment Station 13,377,900

Item 23
To Utah State University – Cooperative Extension
From General Fund 541,600
From Education Fund 11,004,500
From Federal Funds 2,088,500
From Beginning Nonlapsing Appropriation Balances 1,399,800
From Closing Nonlapsing Appropriation Balances (1,399,800)
Schedule of Programs:
Cooperative Extension 13,634,600

Item 24
To Utah State University – Prehistoric Museum
From General Fund 150,000
From Education Fund 105,700
From Beginning Nonlapsing Appropriation Balances 117,500
From Closing Nonlapsing Appropriation Balances (117,500)
Schedule of Programs:
Prehistoric Museum 255,700

Item 25
To Utah State University – San Juan Center
From General Fund 1,677,200
From Education Fund 479,600
From Dedicated Credits Revenue 904,200
From Beginning Nonlapsing Appropriation Balances 43,000
From Closing Nonlapsing Appropriation Balances (43,000)
Schedule of Programs:
San Juan Center 3,061,000

Item 26
To Utah State University – Western Energy Training Center
From Beginning Nonlapsing Appropriation Balances (2,700)
From Closing Nonlapsing Appropriation Balances 2,700

WEBER STATE UNIVERSITY

Item 27
To Weber State University – Education and General
From General Fund 57,422,900
From Education Fund 900,500
From Dedicated Credits Revenue 53,819,100
From Beginning Nonlapsing Appropriation Balances 2,143,000

From Closing Nonlapsing Appropriation Balances	(2,143,000)
Schedule of Programs:	
Education and General	112,142,500

Item 28

To Weber State University – Educationally Disadvantaged	
From General Fund	296,100
From Education Fund	47,900
From Beginning Nonlapsing Appropriation Balances	88,600
From Closing Nonlapsing Appropriation Balances	(88,600)
Schedule of Programs:	
Educationally Disadvantaged	344,000

SOUTHERN UTAH UNIVERSITY

Item 29

To Southern Utah University – Education and General	
From General Fund	9,318,400
From Education Fund	18,583,400
From Dedicated Credits Revenue	28,091,000
From Beginning Nonlapsing Appropriation Balances	1,343,500
From Closing Nonlapsing Appropriation Balances	(1,343,500)
Schedule of Programs:	
Education and General	55,992,800

Item 30

To Southern Utah University – Educationally Disadvantaged	
From General Fund	81,400
From Education Fund	8,300
From Beginning Nonlapsing Appropriation Balances	5,600
From Closing Nonlapsing Appropriation Balances	(5,600)
Schedule of Programs:	
Educationally Disadvantaged	89,700

Item 31

To Southern Utah University – Shakespeare Festival	
From General Fund	9,100
From Education Fund	12,500
Schedule of Programs:	
Shakespeare Festival	21,600

Item 32

To Southern Utah University – Rural Development	
From General Fund	83,200
From Education Fund	12,900
From Beginning Nonlapsing Appropriation Balances	100
From Closing Nonlapsing Appropriation Balances	(100)
Schedule of Programs:	
Rural Development	96,100

UTAH VALLEY UNIVERSITY

Item 33

To Utah Valley University – Education and General	
From General Fund	52,262,400
From Education Fund	4,555,400
From Dedicated Credits Revenue	81,121,000
From Beginning Nonlapsing Appropriation Balances	7,300,200
From Closing Nonlapsing Appropriation Balances	(7,300,200)
Schedule of Programs:	
Education and General	137,938,800

Item 34

To Utah Valley University – Educationally Disadvantaged	
From General Fund	139,100
From Education Fund	18,800
From Beginning Nonlapsing Appropriation Balances	4,000
From Closing Nonlapsing Appropriation Balances	(4,000)
Schedule of Programs:	
Educationally Disadvantaged	157,900

SNOW COLLEGE

Item 35

To Snow College – Education and General	
From General Fund	456,600
From Education Fund	16,184,700
From Dedicated Credits Revenue	7,559,900
From Beginning Nonlapsing Appropriation Balances	868,600
From Closing Nonlapsing Appropriation Balances	(868,600)
Schedule of Programs:	
Education and General	24,201,200

Item 36

To Snow College – Educationally Disadvantaged	
From General Fund	32,000
Schedule of Programs:	
Educationally Disadvantaged	32,000

Item 37

To Snow College – Career and Technology Education	
From General Fund	1,263,700
Schedule of Programs:	
Career and Technology Education	1,263,700

DIXIE STATE COLLEGE OF UTAH

Item 38

To Dixie State College of Utah – Education and General	
From General Fund	490,400
From Education Fund	19,373,600
From Dedicated Credits Revenue	12,520,000
From Beginning Nonlapsing Appropriation Balances	169,500
From Closing Nonlapsing Appropriation Balances	(169,500)

Schedule of Programs:
Education and General 32,384,000

Item 39
To Dixie State College of Utah – Educationally Disadvantaged
From General Fund 25,500
From Beginning Nonlapsing Appropriation Balances 900
From Closing Nonlapsing Appropriation Balances (900)
Schedule of Programs:
Educationally Disadvantaged 25,500

Item 40
To Dixie State College of Utah – Zion Park Amphitheater
From General Fund 47,000
From Education Fund 4,000
From Dedicated Credits Revenue 33,500
From Beginning Nonlapsing Appropriation Balances (4,600)
From Closing Nonlapsing Appropriation Balances 4,600
Schedule of Programs:
Zion Park Amphitheater 84,500

SALT LAKE COMMUNITY COLLEGE

Item 41
To Salt Lake Community College – Education and General
From General Fund 4,802,700
From Education Fund 49,053,000
From Dedicated Credits Revenue 46,623,900
From Beginning Nonlapsing Appropriation Balances 12,110,600
From Closing Nonlapsing Appropriation Balances (12,110,600)
Schedule of Programs:
Education and General 100,479,600

Item 42
To Salt Lake Community College – Educationally Disadvantaged
From General Fund 178,400
From Beginning Nonlapsing Appropriation Balances 17,400
From Closing Nonlapsing Appropriation Balances (17,400)
Schedule of Programs:
Educationally Disadvantaged 178,400

Item 43
To Salt Lake Community College – School of Applied Technology
From General Fund 4,133,700
From Education Fund 1,698,400
From Dedicated Credits Revenue 1,852,900
From Beginning Nonlapsing Appropriation Balances 406,300
From Closing Nonlapsing Appropriation Balances (406,300)
Schedule of Programs:
School of Applied Technology 7,685,000

STATE BOARD OF REGENTS

Item 44
To State Board of Regents – Administration
From General Fund 2,504,600
From Education Fund 700
From Federal Funds 303,100
From Beginning Nonlapsing Appropriation Balances 173,200
From Closing Nonlapsing Appropriation Balances (173,200)
Schedule of Programs:
Administration 2,505,300
Federal Programs 303,100

Item 45
To State Board of Regents – Student Assistance
From General Fund 5,459,400
From Education Fund 5,257,200
From Beginning Nonlapsing Appropriation Balances 237,500
From Closing Nonlapsing Appropriation Balances (237,500)
Schedule of Programs:
Regents' Scholarship 2,440,600
Student Financial Aid 3,084,200
Minority Scholarships 34,300
Tuition Assistance 34,300
New Century Scholarships 1,608,000
Utah Centennial Opportunity Program for Education 1,319,100
Western Interstate Commission for Higher Education 795,100
T.H. Bell Teaching Incentive Loans Program 1,401,000

Item 46
To State Board of Regents – Student Support
From General Fund 718,400
From Education Fund 745,600
Schedule of Programs:
Prison Recidivism (20,100)
Services for Hearing Impaired Students 756,200
Concurrent Enrollment 405,500
Articulation Support 249,500
Campus Compact 72,900

Item 47
To State Board of Regents – Technology
From General Fund 3,624,600
From Education Fund 3,186,300
From Beginning Nonlapsing Appropriation Balances 19,400
From Closing Nonlapsing Appropriation Balances (19,400)
Schedule of Programs:
Higher Education Technology Initiative 4,336,300
Utah Academic Library Consortium 2,474,600

Item 48
To State Board of Regents – Economic Development
From General Fund 331,600

Schedule of Programs:
Engineering Loan Repayment 36,500
Economic Development Initiatives 295,100

UTAH COLLEGE OF APPLIED TECHNOLOGY

Item 49
To Utah College of Applied Technology - Administration
From General Fund 2,771,700
From Education Fund 1,720,300
From Beginning Nonlapsing Appropriation Balances (1,300)
From Closing Nonlapsing Appropriation Balances 1,300
Schedule of Programs:
Administration 1,462,100
Equipment 527,900
Custom Fit 2,502,000

Item 50
To Utah College of Applied Technology - Bridgerland Applied Technology College
From General Fund 3,814,100
From Education Fund 4,479,200
From Dedicated Credits Revenue 1,276,100
From Beginning Nonlapsing Appropriation Balances (1,100)
From Closing Nonlapsing Appropriation Balances 1,100
Schedule of Programs:
Bridgerland Applied Technology College 9,569,400

Item 51
To Utah College of Applied Technology - Davis Applied Technology College
From General Fund 3,570,400
From Education Fund 5,138,500
From Dedicated Credits Revenue 2,205,000
Schedule of Programs:
Davis Applied Technology College 10,913,900

Item 52
To Utah College of Applied Technology - Dixie Applied Technology College
From General Fund 82,800
From Education Fund 1,814,300
From Dedicated Credits Revenue 115,000
Schedule of Programs:
Dixie Applied Technology College 2,012,100

Item 53
To Utah College of Applied Technology - Mountainland Applied Technology College
From Education Fund 4,710,700
From Dedicated Credits Revenue 650,000
Schedule of Programs:
Mountainland Applied Technology College 5,360,700

Item 54
To Utah College of Applied Technology - Ogden/Weber Applied Technology College
From General Fund 4,704,000
From Education Fund 5,052,400
From Dedicated Credits Revenue 1,422,000
From Closing Nonlapsing Appropriation Balances 200
Schedule of Programs:
Ogden/Weber Applied Technology College 11,178,600

Item 55
To Utah College of Applied Technology - Southwest Applied Technology College
From General Fund 161,400
From Education Fund 1,914,200
From Dedicated Credits Revenue 162,200
Schedule of Programs:
Southwest Applied Technology College 2,237,800

Item 56
To Utah College of Applied Technology - Tooele Applied Technology College
From General Fund 255,800
From Education Fund 634,800
From Dedicated Credits Revenue 111,000
From Beginning Nonlapsing Appropriation Balances 67,500
From Closing Nonlapsing Appropriation Balances (86,600)
Schedule of Programs:
Tooele Applied Technology College 982,500

Item 57
To Utah College of Applied Technology - Uintah Basin Applied Technology College
From General Fund 1,239,100
From Education Fund 3,339,800
From Dedicated Credits Revenue 450,000
Schedule of Programs:
Uintah Basin Applied Technology College 5,028,900

UTAH EDUCATION NETWORK

Item 58
To Utah Education Network
From Education Fund 15,741,300
From Federal Funds 7,900,000
From Dedicated Credits Revenue 10,690,000
From Other Financing Sources 835,300
Schedule of Programs:
Administration 2,110,900
Operations and Maintenance 922,500
Public Information 190,000
KUEN Broadcast 567,900
Technical Services 27,266,000
Special Projects (WebCT) 1,156,700
Instructional Support 2,952,600

MEDICAL EDUCATION COUNCIL

Item 59
To Medical Education Council
From General Fund 521,700
From Dedicated Credits Revenue 335,100
From Beginning Nonlapsing Appropriation Balances 663,600

From Closing Nonlapsing Appropriation Balances	(277,200)
Schedule of Programs:	
Medical Education Council	1,243,200

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 9
S. B. 8
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY BASE BUDGET

Chief Sponsor: David P. Hinkins
House Sponsor: John G. Mathis

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described;
- approves employment levels for internal service funds;

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $57,485,800 from the General Fund;
- $262,774,700 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

DEPARTMENT OF NATURAL RESOURCES

Item 1

To Department of Natural Resources – Administration

From General Fund	3,054,300
Schedule of Programs:	
Executive Director	914,600
Administrative Services	1,675,800
Public Affairs	179,100
Lake Commissions	78,700
Law Enforcement	206,100

Item 2

To Department of Natural Resources – Species Protection

From Dedicated Credits Revenue	2,450,000
From General Fund Restricted – Species Protection	601,800
Schedule of Programs:	
Species Protection	3,051,800

Item 3

To Department of Natural Resources – Building Operations

From General Fund	1,621,400
Schedule of Programs:	
Building Operations	1,621,400

Item 4

To Department of Natural Resources – Watershed

From General Fund	1,447,400
From Dedicated Credits Revenue	500,000
Schedule of Programs:	
Watershed	1,947,400

Item 5

To Department of Natural Resources – Forestry, Fire and State Lands

From General Fund	2,330,900
From Federal Funds	3,225,600
From Dedicated Credits Revenue	5,500,000
From General Fund Restricted – Sovereign Land Management	4,794,000
Schedule of Programs:	
Division Administration	941,500
Fire Management	934,800
Fire Suppression Emergencies	1,501,000
Lands Management	543,900
Forest Management	1,265,200
Program Delivery	7,074,800
Lone Peak Center	2,829,300
Project Management	760,000

Item 6

To Department of Natural Resources – Oil, Gas and Mining

From General Fund	1,411,200
From Federal Funds	7,115,000
From Dedicated Credits Revenue	213,500
From General Fund Restricted – Oil & Gas Conservation Account	3,526,200
Schedule of Programs:	
Administration	1,692,300
Board	50,000
Oil and Gas Conservation	3,049,500
Minerals Reclamation	826,800
Coal Reclamation	1,777,300
Abandoned Mine	4,870,000

Item 7

To Department of Natural Resources – Wildlife Resources

From General Fund	5,697,800
From Federal Funds	12,077,000
From Dedicated Credits Revenue	86,100
From General Fund Restricted – Wildlife Habitat	2,900,000
From General Fund Restricted – Wildlife Resources	29,538,900
From Revenue Transfers	164,900
Schedule of Programs:	
Director's Office	2,744,600
Administrative Services	6,980,000

Conservation Outreach 2,314,800
Law Enforcement 8,575,400
Habitat Council 3,021,700
Habitat Section 4,150,900
Wildlife Section 8,914,200
Aquatic Section 13,763,100

Item 8

To Department of Natural Resources – Predator Control
From General Fund 59,600
Schedule of Programs:
Predator Control 59,600

Item 9

To Department of Natural Resources – License Reimbursement
From General Fund 74,800
Schedule of Programs:
License Reimbursement 74,800

Item 10

To Department of Natural Resources – Contributed Research
From Dedicated Credits Revenue 830,900
Schedule of Programs:
Contributed Research 830,900

Item 11

To Department of Natural Resources – Cooperative Agreements
From Federal Funds 7,057,500
From Dedicated Credits Revenue 1,106,100
From Revenue Transfers 8,491,400
Schedule of Programs:
Cooperative Agreements 16,655,000

Item 12

To Department of Natural Resources – Wildlife Resources Capital Budget
From General Fund 649,400
From Federal Funds 500,000
From General Fund Restricted – State Fish Hatchery Maintenance 1,205,000
Schedule of Programs:
Fisheries 2,354,400

Item 13

To Department of Natural Resources – Parks and Recreation
From General Fund 6,810,600
From Federal Funds 1,214,000
From Dedicated Credits Revenue 637,800
From General Fund Restricted – Boating 4,179,300
From General Fund Restricted – Off-highway Vehicle 3,834,300
From General Fund Restricted – Off-highway Access and Education 17,500
From General Fund Restricted – Zion National Park Support Programs 4,000
From General Fund Restricted – State Park Fees 10,794,800
From Revenue Transfers 1,300
Schedule of Programs:
Executive Management 984,400
Park Operation Management 18,470,300
Planning and Design 1,446,700
Support Services 2,397,100
Recreation Services 3,306,300
Park Management Contracts 888,800

Item 14

To Department of Natural Resources – Parks and Recreation Capital Budget
From General Fund 122,700
From Federal Funds 1,200,000
From Dedicated Credits Revenue 25,000
From General Fund Restricted – Boating 575,000
From General Fund Restricted – Off-highway Vehicle 400,000
From General Fund Restricted – State Park Fees 350,000
From Revenue Transfers 350,000
Schedule of Programs:
Renovation and Development 114,200
Major Renovation 678,500
Trails Program 530,000
Donated Capital Projects 25,000
Region Renovation 100,000
Land and Water Conservation 700,000
Boat Access Grants 700,000
Off-highway Vehicle Grants 175,000

Item 15

To Department of Natural Resources – Utah Geological Survey
From General Fund 2,543,600
From Federal Funds 921,500
From Dedicated Credits Revenue 958,200
From General Fund Restricted – Mineral Lease 2,500,000
From General Fund Restricted – Land Exchange Distribution Account 682,100
From Beginning Nonlapsing Appropriation Balances 951,600
From Closing Nonlapsing Appropriation Balances (374,600)
Schedule of Programs:
Administration 729,500
Technical Services 752,200
Geologic Hazards 1,127,900
Board 3,500
Geologic Mapping 982,500
Energy and Minerals 2,051,800
Ground Water and Paleontology 1,411,200
Information and Outreach 728,100
Utah State Energy Program 395,700

Item 16

To Department of Natural Resources – Water Resources
From General Fund 2,534,300
From Federal Funds 76,000
From Dedicated Credits Revenue 150,000
From Water Resources Conservation and Development Fund 2,818,600
Schedule of Programs:
Administration 440,900
Board 23,400

Interstate Streams 342,200
Planning 2,393,100
Cloudseeding 300,000
Construction 2,068,700
West Desert Ops 10,600

Item 17

To Department of Natural Resources – Water Resources Revolving Construction Fund
From Water Resources Conservation and Development Fund 3,800,000
Schedule of Programs:
Construction Fund 3,800,000

Item 18

To Department of Natural Resources – Water Rights
From General Fund 7,002,100
From Federal Funds 100,000
From Dedicated Credits Revenue 1,475,000
Schedule of Programs:
Administration 1,078,200
Applications and Records 1,297,300
Dam Safety 826,900
Field Services 1,126,700
Cooperative Studies 500,000
Technical Services 815,000
Regional Offices 2,933,000

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 19

To Department of Environmental Quality – Environmental Quality
From General Fund 9,936,500
From Federal Funds 24,298,900
From Dedicated Credits Revenue 8,721,100
From General Fund Restricted – Environmental Quality 6,521,400
From General Fund Restricted – Underground Wastewater System 76,000
From General Fund Restricted – Used Oil Collection Administration 747,000
From General Fund Restricted – Voluntary Cleanup 624,000
From Water Development Security Fund – Drinking Water Subaccount 138,700
From Water Development Security Fund – Drinking Water Loan Program 3,500
From Water Development Security Fund – Drinking Water Origination Fee 74,900
From Water Development Security Fund – Utah Wastewater Loan Program 995,800
From Water Development Security Fund – Water Quality Origination Fee 79,300
From Expendable Trust – Petroleum Storage Tank 1,310,800
From Expendable Trust – Waste Tire Recycling 130,700
From Clean Fuel Vehicle Loan 110,000
From Petroleum Storage Tank Account 50,000
From Petroleum Storage Tank Loan 163,300
From Revenue Transfers – Within Agency 413,900
Schedule of Programs:
Director's Office 4,736,900
Air Quality 11,894,800
Environmental Response/ Remediation 11,538,400
Radiation Control 3,920,000
Water Quality 10,058,100
Drinking Water 5,147,700
Solid and Hazardous Waste 7,099,900

Item 20

To Department of Environmental Quality – Water Security Development Account – Water Pollution
From Federal Funds 10,000,000
From Designated Sales Tax 3,587,500
From Repayments 13,939,000
Schedule of Programs:
Water Pollution 27,526,500

Item 21

To Department of Environmental Quality – Water Security Development Account – Drinking Water
From Federal Funds 10,858,400
From Designated Sales Tax 3,587,500
From Repayments 6,772,400
Schedule of Programs:
Drinking Water 21,218,300

PUBLIC LANDS POLICY COORDINATING OFFICE

Item 22

To Public Lands Policy Coordinating Office
From General Fund 309,300
From General Fund Restricted – Constitutional Defense 1,366,000
Schedule of Programs:
Public Lands Office 1,675,300

DEPARTMENT OF NATURAL RESOURCES INTERNAL SERVICE FUNDS

Item 23

To Department of Natural Resources – Internal Service Fund
From Dedicated Credits – Intragovernmental Revenue 638,400
Schedule of Programs:
ISF – DNR Warehouse 638,400
Budgeted FTE 2.0

DEPARTMENT OF AGRICULTURE AND FOOD

Item 24

To Department of Agriculture and Food – Administration
From General Fund 7,756,000
From Federal Funds 6,301,600
From Dedicated Credits Revenue 3,402,800
From General Fund Restricted – Horse Racing 20,000
From General Fund Restricted – Livestock Brand 932,500

From General Fund Restricted – Agriculture and Wildlife Damage Prevention 54,500
From Agriculture Resource Development Fund 175,000
From Revenue Transfers 553,800
From Pass-through 56,900
Schedule of Programs:
General Administration 1,783,000
Meat Inspection 2,069,300
Chemistry Laboratory 782,900
Animal Health 1,351,300
Plant Industry 2,834,300
Regulatory Services 3,117,300
Sheep Promotion 35,000
Auction Market Veterinarians 72,000
Brand Inspection 1,231,800
Utah Horse Commission 29,800
Environmental Quality 2,908,100
Grain Inspection 226,800
Insect Infestation 1,529,700
Marketing and Development 508,500
Grazing Improvement 773,300

Item 25

To Department of Agriculture and Food – Building Operations
From General Fund 305,000
Schedule of Programs:
Building Operations 305,000

Item 26

To Department of Agriculture and Food – Utah State Fair Corporation
From General Fund 607,500
From Dedicated Credits Revenue 3,325,000
From Beginning Nonlapsing Appropriation Balances 165,400
From Closing Nonlapsing Appropriation Balances (24,500)
Schedule of Programs:
State Fair Corporation 4,073,400

Item 27

To Department of Agriculture and Food – Predatory Animal Control
From General Fund 733,300
From General Fund Restricted – Agriculture and Wildlife Damage Prevention 572,100
From Pass-through 57,000
Schedule of Programs:
Predatory Animal Control 1,362,400

Item 28

To Department of Agriculture and Food – Resource Conservation
From General Fund 1,131,800
From Agriculture Resource Development Fund 386,100
Schedule of Programs:
Resource Conservation Administration 163,500
Conservation Commission 12,100
Resource Conservation 1,342,300

Item 29

To Department of Agriculture and Food – Loans
From Agriculture Resource Development Fund 251,000
From Utah Rural Rehabilitation Loan 63,000
Schedule of Programs:
Agriculture Loan Program 314,000

Item 30

To Department of Agriculture and Food – Rangeland Improvement
From General Fund Restricted – Rangeland Improvement Account 1,241,700
Schedule of Programs:
Rangeland Improvement 1,241,700

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

Item 31

To School and Institutional Trust Lands Administration
From Land Grant Management Fund 9,150,000
Schedule of Programs:
Board 89,000
Director 479,500
Public Relations 234,800
Administration 955,100
Accounting 382,800
Auditing 354,000
Oil and Gas 631,100
Mining 677,800
Surface 1,683,700
Development – Operating 1,463,200
Legal/Contracts 729,200
Data Processing 973,400
Grazing and Forestry 496,400

Item 32

To School and Institutional Trust Lands Administration – School and Institutional Trust Lands Administration Capital
From Land Grant Management Fund 8,800,000
Schedule of Programs:
Capital 8,800,000

REVENUE - NATURAL RESOURCES, AGRICULTURE, & ENVIRONMENTAL QUALITY

Item 33

To General Fund
From General Fund Restricted – Species Protection 207,000
Schedule of Programs:
General Fund 207,000

RESTRICTED REVENUE - NATURAL RESOURCES, AGRICULTURE, & ENVIRONMENTAL QUALITY

Item 34

To Rangeland Improvement Fund
From General Fund 1,346,300
Schedule of Programs:

Rangeland Improvement Fund 1,346,300

Item 35

To General Fund Restricted – Constitutional Defense Restricted Account

From General Fund Restricted – Land Exchange Distribution Account 2,350,000

Schedule of Programs:

Constitutional Defense Restricted Account 2,350,000

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 10
S. B. 9
Passed February 2, 2011
Approved February 16, 2011
Effective July 1, 2011

RETIREMENT AND INDEPENDENT ENTITIES BASE BUDGET

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
- provides appropriations for other purposes as described;
- approves employment levels for internal service funds;
- approves capital acquisition amounts for internal service funds.

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2012:

- $2,968,900 from the General Fund;
- $11,229,400 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Under the terms and conditions of Utah Code Title 63J, the following sums of money are appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2011 and ending June 30, 2012.

CAREER SERVICE REVIEW OFFICE

Item 1

To Career Service Review Office

From General Fund 212,800

Schedule of Programs:

Career Service Review Office 212,800

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Item 2

To Department of Human Resource Management – Human Resource Management

From General Fund 2,756,100

From Dedicated Credits Revenue 400,000

Schedule of Programs:

Administration	874,700
Policy	669,200
Teacher Salary Supplement	192,000
Statewide Management Liability Training	400,000
Information Technology	1,020,200

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT INTERNAL SERVICE FUNDS

Item 3

To Department of Human Resource Management

From Dedicated Credits – Intragovernmental Revenue 10,829,400

Schedule of Programs:

Field Services	10,829,400
Budgeted FTE	143.8

Section 2. Effective Date.

This bill takes effect on July 1, 2011.

CHAPTER 11
S. B. 107
Passed February 9, 2011
Approved February 23, 2011
Effective February 23, 2011

HIGHER EDUCATION SUCCESS STIPEND PROGRAM

Chief Sponsor: Wayne L. Niederhauser
House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill replaces the Utah Centennial Opportunity Program for Education with the Success Stipend Program within the State System of Higher Education.

Highlighted Provisions:

This bill:

- renames the Utah Centennial Opportunity Program for Education as the Success Stipend Program and modifies provisions, including:
  - modifying definitions;
  - modifying findings of the Legislature;
  - modifying reporting requirements;
  - prohibiting the Board of Regents from using program money for administrative purposes; and
  - repealing the Cesar Chavez Scholarship Program within the Utah Centennial Opportunity Program for Education; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

53B-13a-101, as enacted by Laws of Utah 1996, Chapter 302
53B-13a-102, as last amended by Laws of Utah 2004, Chapter 10
53B-13a-103, as enacted by Laws of Utah 1996, Chapter 302
53B-13a-104, as last amended by Laws of Utah 2004, Chapter 10

REPEALS:

53B-13a-106, as enacted by Laws of Utah 2004, Chapter 10

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

Section 1. Section 53B-13a-101 is amended to read:

CHAPTER 13a. SUCCESS STIPEND PROGRAM ACT

53B-13a-101. Title.

This chapter is known as the "[~~Utah Centennial Opportunity Program for Education~~] Success Stipend Program Act."

Section 2. Section 53B-13a-102 is amended to read:

53B-13a-102. Definitions.

As used in this chapter:

(1) (a) "Cost of attendance" means [~~the total of~~] the estimated costs associated with attending an institution, as established by the institution in accordance with board policies.

(b) "Cost of attendance" includes costs payable to the institution, [~~plus~~] other direct educational expenses [~~and~~], transportation, and living expenses while attending the institution[~~, set forth in institutional cost-of-attendance budgets which meet criteria established by board rules~~].

(2) (a) "Eligible student" means a financially needy student who is:

(i) unconditionally admitted to and enrolled at a Utah postsecondary institution on at least a half-time basis, as defined by the board, in an eligible postsecondary program leading to a defined education or training objective, as defined by the board; [~~and~~]

(ii) making satisfactory academic progress, as defined by the institution in published policies or rules, toward an education or training objective; and

[~~(ii)~~] (iii) (A) a resident student under Section 53B-8-102 and rules of the board; or

(B) exempt from paying the nonresident portion of total tuition under Section 53B-8-106.

(b) "Eligible student" does not include a graduate student.

[~~(3) "Federal poverty guideline" means the federal poverty measure issued each year by the U.S. Department of Health and Human Services in the Federal Register.~~]

[~~(4) "Financial aid" means grants or work-study stipends to financially needy students enrolled or accepted for enrollment at a Utah postsecondary institution.~~]

[~~(5)~~] (3) "Financially needy student" means a student who demonstrates[~~, on the basis of criteria established by the board,~~] the financial inability[~~, either through the student's parents or family, or personally,~~] to meet all or a portion of the [~~total~~] cost of attendance at an institution for any period of attendance as defined by the board, after considering the student's expected family contribution.

[~~(6)~~] (4) "Fiscal year" means the fiscal year of the state.

[~~(7)~~] (5) "Program" means the [~~Utah Centennial Opportunity~~] Success Stipend Program [~~for Education~~].

[~~(8)~~] (6) "Utah postsecondary institution" or "institution" means:

(a) an institution of higher education listed in Section [~~53B-1-102~~] 53B-2-101; or

(b) a Utah private, nonprofit postsecondary institution that is accredited by a regional accrediting organization recognized by the board.

Section 3. Section 53B-13a-103 is amended to read:

53B-13a-103. Establishment of the Success Stipend Program.

(1) The Legislature finds that [~~the~~]:

(a) the prosperity, economic success, and general welfare [~~and well-being~~] of the people of Utah and of the state are directly related to the educational levels and skills of the citizens of the state[~~,~~]; and [~~that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah public postsecondary institutions~~]

(b) financial assistance, to bridge the gap between a financially needy student's resources and the cost of attendance at a Utah postsecondary institution, is a necessary component for ensuring access to postsecondary education and training [~~as the state enters its second century of statehood~~].

(2) There is created the [~~Utah Centennial Opportunity~~] Success Stipend Program [~~for Education~~] to provide [~~this limited~~] financial assistance to students who, after utilizing family and personal resources, federal assistance, and scholarships, demonstrate financial need.

Section 4. Section 53B-13a-104 is amended to read:

53B-13a-104. Guidelines for administration of the program.

(1) The board shall use the guidelines set forth in this section to develop and administer the program.

[~~(2) The board may design either a centralized or decentralized basis for award of grants and payment of stipends to eligible students, depending on its evaluation of the administrative capabilities of the institutions attended by the students.~~]

[~~(3) The board may, based on an analysis of costs for institutional administration of the program, provide from program money an institutional administrative costs allowance of up to 3.1% of the total value of the grants and stipends awarded for eligible students at the institution for a fiscal year.~~]

[~~(4)~~] (2) (a) The board [~~may~~] shall allocate money appropriated for the program to institutions to provide for [~~both~~] either need-based [~~grant awards and~~] grants or need-based work-study stipends [~~to be paid from the money appropriated and made available for the program, with~~], giving strong emphasis to need-based work-study stipends [~~given strong emphasis~~].

(b) [~~The need-based~~] Need-based grants or need-based work-study stipends are the only forms of student financial [~~aid~~] assistance for which program money may be used.

(c) The board may not use program money for administrative costs or overhead.

[~~(5) The board shall:~~]

[~~(a) provide for coordination of program awards with all existing programs of student financial aid, including all federal programs, except those specifically dedicated to a particular institution by the donor; and~~]

[~~(b) design the program to complement existing federal, state, and institutional programs.~~]

[~~(6) Rules and administrative requirements for the program shall be developed in consultation with the institutions, with appropriate state agencies and private sector organizations regarding the work-study component, and with other interested groups which may be able to contribute to the effectiveness of program development and implementation.~~]

(d) An institution may not use more than 3% of its program money for administrative costs or overhead.

[~~(7)~~] (3) The board shall design the program to utilize [~~the~~] a packaging approach [~~by which institutions currently combine~~] that ensures that institutions combine loans, grants, employment, and family and individual contributions toward financing the cost of attendance at a postsecondary [~~institutions~~] institution.

[~~(8) The program shall require use of~~]

(4) The board shall:

(a) use an appropriate need analysis system[~~, which may be the same system used for determining eligibility under federal student financial aid programs, in determining~~] to determine a student's financial need for the purpose of awarding [~~of~~] a program [~~grants and~~] grant or work-study [~~stipends.~~] stipend; and

[~~(9) In no case may the amount of program grants or work-study stipends or both, with~~]

(b) base the criteria for awarding program funds to an institution or eligible student on assisting only the most financially needy students.

(5) The total sum of a program grant, a work-study stipend, other financial aid from any source, [~~both need and merit-based,~~] and [~~with~~] the expected family and personal [~~contributions,~~] contribution, may not exceed the cost of attendance for [~~the~~] an eligible student at [~~the~~] an institution for a fiscal year.

[~~(10) Criteria for awards of program funds to institutions and students shall be based on assisting only the most financially needy eligible students.~~]

[~~(11)~~] (6) The board shall establish annually the minimum and maximum amounts for a program [~~grants~~] grant and a work-study [~~stipends~~] stipend for the fiscal year.

[~~(12) Grants and work-study stipends shall be awarded~~]

(7) An institution shall award a program grant or work-study stipend on an annual basis but [~~paid~~]

distribute the money one quarter or semester at a time, with [~~payments for quarters or semesters after the first term~~] continuing awards contingent upon the [~~student's~~] eligible student maintaining satisfactory academic progress as defined by the institution in published policies or rules.

[~~(13) All awards under the program shall be made without regard to an applicant's race, creed, color, religion, sex, or ancestry.~~]

(8) An institution shall award all program money without regard to an applicant's race, creed, color, religion, sex, or ancestry.

[~~(14)~~] (9) Students receiving financial [~~aid~~] assistance under the program are required to apply the money toward the cost of attendance at the institution attended, as established pursuant to board rules.

[~~(15)~~] (10) The board shall adopt [~~and publish rules which~~] policies to implement this chapter [~~and any other provisions the board reasonably determines necessary~~] and to ensure sound fiduciary administration of program money [~~and accomplishment of the program objective to assist financially needy state residents to achieve access to and persistence in postsecondary education and training~~] to accomplish program objectives.

[~~(16)~~] (11) The board may require [~~annual~~] a participation [~~agreements~~] agreement from an eligible postsecondary [~~institutions~~] institution, which shall include an agreement to:

(a) provide information needed by the board to administer the program;

(b) comply with program rules [~~in recommending or awarding program grants and work-study stipends to individual students~~];

(c) submit annual reports as required by the board; and

(d) cooperate in program reviews and financial audits as the board may determine to be necessary.

[~~(17) The board, with cooperation from participating institutions, shall:~~]

[~~(a) establish a research database;~~]

[~~(b) conduct appropriate research into the effects of student financial aid on students' access to and persistence in postsecondary education and training; and~~]

[~~(c) utilize the research in planning and modifying the design of the program.~~]

[~~(18)~~] (12) The board shall annually report [~~annually~~] program outcomes to the governor and the [~~Legislature on~~] Legislature's Higher Education Appropriations Subcommittee, including:

[~~(a) the administration of the program;~~]

[~~(b)~~] (a) utilization of program money[~~;~~], including the:

(i) number of program recipients at each institution; and

(ii) average amount of financial assistance provided;

[~~(c)~~] (b) benefits in fulfillment of the purposes established for the program; and

[~~(d)~~] (c) any recommendations for program modification, including recommended funding levels.

[~~(19)~~] (13) The board shall regularly provide information to students on [~~employment opportunities in occupational and~~] professional training and degree programs [~~as identified through annual marketplace surveys~~] available in the state through online career and educational exploration tools.

Section 5. Repealer.

This bill repeals:

Section 53B-13a-106, Cesar Chavez Scholarship Program.

Section 6. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 12
H. B. 23
Passed February 16, 2011
Approved February 25, 2011
Effective February 25, 2011
(Exception clause in Section 11)

CONTROLLED SUBSTANCE MODIFICATIONS

Chief Sponsor: Gage Froerer
Senate Sponsor: Allen M. Christensen
Cosponsors: Roger E. Barrus
Jackie Biskupski
David G. Butterfield
Tim M. Cosgrove
Fred C. Cox
Steve Eliason
Brad J. Galvez
Christopher N. Herrod
Don L. Ipson
Michael T. Morley
Val L. Peterson
Dixon M. Pitcher
Paul Ray
Douglas Sagers
Stephen E. Sandstrom
Dean Sanpei
Jennifer M. Seelig
Kenneth W. Sumsion
Evan J. Vickers
Christine F. Watkins
R. Curt Webb
Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies provisions relating to the Utah Controlled Substances Act by creating a controlled class of listed synthetic cannabinoid substances found in products often referred to as "spice."

Highlighted Provisions:

This bill:

- expands the definition of a controlled substance to include a list of synthetic equivalent cannabinoid substances and their analogs and homologs found in products commonly referred to as "spice";
- expands the definition of a controlled substance to include substances and their analogs and homologs found in products referred to as "bath salts";
- clarifies that the tetrahydrocannabinols in Schedule I of the Utah Controlled Substances Act include those both naturally and synthetically derived;
- provides that it is an affirmative defense that the person produced, possessed, or administered any of these listed substances if the person:
  - was engaged in medical research; and
  - was a holder of a license to possess controlled substances for research;
- authorizes the Controlled Substances Advisory Committee to recommend placement of a substance on a controlled substance list if it finds that the substance has a potential for abuse and that an accepted standard has not been established for safe use in treatment for medical purposes;
- adds "spice" to the driver license provisions regarding driving under the influence; and
- provides that a legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of the Utah Controlled Substances Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-517, as last amended by Laws of Utah 2009, Chapter 390
58-37-2 (Superseded 07/01/11), as last amended by Laws of Utah 2010, Chapters 64 and 101
58-37-2 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapters 64, 101, and 276
58-37-3, as last amended by Laws of Utah 1997, Chapter 64
58-37-4, as last amended by Laws of Utah 2010, Chapter 106
58-37-6, as last amended by Laws of Utah 2010, Chapter 287
58-37-8, as last amended by Laws of Utah 2010, Chapter 64
58-38a-203, as enacted by Laws of Utah 2010, Chapter 231
58-38a-204, as enacted by Laws of Utah 2010, Chapter 231

ENACTS:

58-37-4.2, Utah Code Annotated 1953

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

Section 1. Section 41-6a-517 is amended to read:

41-6a-517. Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.

(1) As used in this section:

(a) "Controlled substance" [~~means any substance scheduled under Section 58-37-4.~~] has the same meaning as in Section 58-37-2.

(b) "Practitioner" has the same meaning as [~~provided~~] in Section 58-37-2.

(c) "Prescribe" has the same meaning as [~~provided~~] in Section 58-37-2.

(d) "Prescription" has the same meaning as [~~provided~~] in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was:

(a) involuntarily ingested by the accused;

(b) prescribed by a practitioner for use by the accused; or

(c) otherwise legally ingested.

(4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(b) A person who violates this section is subject to conviction and sentencing under both this section and any applicable offense under Section 58-37-8.

(5) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in the officer's presence, and if the officer has probable cause to believe that the violation was committed by the person.

(6) The Driver License Division shall:

(a) if the person is 21 years of age or older on the date of arrest:

(i) suspend, for a period of 120 days, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(ii) revoke, for a period of two years, the driver license of a person if:

(A) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(B) the current violation under Subsection (2) is committed:

(I) within a period of 10 years after the date of the prior violation; and

(II) on or after July 1, 2009;

(b) if the person is under 21 years of age on the date of arrest:

(i) suspend, until the person is 21 years of age or for a period of 120 days, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(ii) revoke, until the person is 21 years of age or for a period of two years, the driver license of a person if:

(A) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(B) the current violation under Subsection (2) is committed:

(I) within a period of 10 years after the date of the prior violation; and

(II) on or after July 1, 2009;

(c) subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based; and

(d) deny, suspend, or revoke a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was committed prior to July 1, 2009.

(7) (a) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered screening and assessment, educational series, and substance abuse treatment; or

(ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(8) The court shall order supervised probation in accordance with Section 41-6a-507 for a person convicted under Subsection (2).

Section 2. Section 58-37-2 (Superseded 07/01/11) is amended to read:

58-37-2 (Superseded 07/01/11). Definitions.

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics.

Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f) (i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513; [~~or~~]

(C) that is a controlled substance analog[~~.~~]; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32A, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g) (i) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513, or listed in Section 58-37-4.2:

(A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules set forth in Subsection (1)(f), or a substance listed in Section 58-37-4.2; or

(B) which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules or list set forth in this Subsection (1).

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4 or listed in Section 58-37-4.2;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a, 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b, 37c, or 37d.

(i) "Counterfeit substance" means:

(i) any controlled substance or container or labeling of any controlled substance that:

(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or

(ii) any substance other than under Subsection (1)(i)(i) that:

(A) is falsely represented to be any legally or illegally manufactured controlled substance; and

(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:

(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system;

(iii) lysergic acid diethylamide; or

(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(r) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in Subsections (1)(r)(i)(A), (B), and (C)[~~, and (D)~~].

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or

processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

(ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) opium poppy and poppy straw; or

(iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species papaver somniferum L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(ll) "Prescription" means an order issued:

(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and

(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.

(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

(oo) "State" means the state of Utah.

(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Section 3. Section 58-37-2 (Effective 07/01/11) is amended to read:

58-37-2 (Effective 07/01/11). Definitions.

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f) (i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513; [~~or~~]

(C) that is a controlled substance analog[~~.~~]; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g) (i) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513:

(A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules set forth in Subsection (1)(f), a substance listed in Section 58-37-4.2; or

(B) which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules or list set forth in this Subsection (1).

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including

concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a, 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b, 37c, or 37d.

(i) "Counterfeit substance" means:

(i) any controlled substance or container or labeling of any controlled substance that:

(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or

(ii) any substance other than under Subsection (1)(i)(i) that:

(A) is falsely represented to be any legally or illegally manufactured controlled substance; and

(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:

(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system;

(iii) lysergic acid diethylamide; or

(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(r) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in Subsections (1)(r)(i)(A), (B), and (C)[~~, and (D)~~].

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the

conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

(ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) opium poppy and poppy straw; or

(iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species papaver somniferum L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist,

scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(ll) "Prescription" means an order issued:

(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and

(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.

(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

(oo) "State" means the state of Utah.

(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Section 4. Section 58-37-3 is amended to read:

58-37-3. Controlled substances.

(1) All substances listed in Section 58-37-4 or 58-37-4.2 are [~~considered~~] controlled.

(2) All substances listed in the federal Controlled Substances Act, Title II, P.L. 91-513, are [~~considered~~] controlled.

Section 5. Section 58-37-4 is amended to read:

58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings required -- Specific substances included in schedules.

(1) There are established five schedules of controlled substances known as Schedules I, II, III, IV, and V which [~~shall~~] consist of substances listed in this section.

(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:

(a) Schedule I:

(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(B) Acetylmethadol;

(C) Allylprodine;

(D) Alphacetylmethadol, except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(E) Alphameprodine;

(F) Alphamethadol;

(G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(I) Benzethidine;

(J) Betacetylmethadol;

(K) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(L) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(M) Betameprodine;

(N) Betamethadol;

(O) Betaprodine;

(P) Clonitazene;

(Q) Dextromoramide;

(R) Diampromide;

(S) Diethylthiambutene;

(T) Difenoxin;

(U) Dimenoxadol;

(V) Dimepheptanol;

(W) Dimethylthiambutene;

(X) Dioxaphetyl butyrate;

(Y) Dipipanone;

(Z) Ethylmethylthiambutene;

(AA) Etonitazene;

(BB) Etoxeridine;

(CC) Furethidine;

(DD) Hydroxypethidine;

(EE) Ketobemidone;

(FF) Levomoramide;

(GG) Levophenacylmorphan;

(HH) Morpheridine;

(II) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(JJ) Noracymethadol;

(KK) Norlevorphanol;

(LL) Normethadone;

(MM) Norpipanone;

(NN) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide;

(OO) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(PP) Phenadoxone;

(QQ) Phenampromide;

(RR) Phenomorphan;

(SS) Phenoperidine;

(TT) Piritramide;

(UU) Proheptazine;

(VV) Properidine;

(WW) Propiram;

(XX) Racemoramide;

(YY)Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(ZZ) Tilidine;

(AAA) Trimeperidine;

(BBB) 3-methylfentanyl, including the optical and geometric isomers (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide); and

(CCC)3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl] -N-phenylpropanamide).

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Drotebanol;

(J) Etorphine (except hydrochloride salt);

(K) Heroin;

(L) Hydromorphinol;

(M) Methyldesorphine;

(N) Methylhydromorphine;

(O) Morphine methylbromide;

(P) Morphine methylsulfonate;

(Q) Morphine-N-Oxide;

(R) Myrophine;

(S) Nicocodeine;

(T) Nicomorphine;

(U) Normorphine;

(V) Pholcodine; and

(W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (2)(iii) only, "isomer" includes the optical, position, and geometric isomers:

(A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase; à-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; à-ET; and AET;

(B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names: 4-bromo-2,5-dimethoxy-à-methylphenethylamine; 4-bromo-2,5-DMA;

(C) 4-bromo-2,5-dimethoxypenethylamine, some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(D) 2,5-dimethoxyamphetamine, some trade or other names: 2,5-dimethoxy-à-methylphenethylamine; 2,5-DMA;

(E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

(F) 4-methoxyamphetamine, some trade or other names: 4-methoxy-à-methylphenethylamine; paramethoxyamphetamine, PMA;

(G) 5-methoxy-3,4-methylenedioxyamphetamine;

(H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names: 4-methyl-2,5-dimethoxy-à-methylphenethylamine; "DOM"; and "STP";

(I) 3,4-methylenedioxy amphetamine;

(J) 3,4-methylenedioxymethamphetamine (MDMA);

(K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(M) 3,4,5-trimethoxy amphetamine;

(N) Bufotenine, some trade and other names: 3-(-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

(P) Dimethyltryptamine, some trade or other names: DMT;

(Q) Ibogaine, some trade and other names: 7-Ethyl-6,6,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga;

(R) Lysergic acid diethylamide;

(S) Marijuana;

(T) Mescaline;

(U) Parahexyl, some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;

(V) Peyote, meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));

(W) N-ethyl-3-piperidyl benzilate;

(X) N-methyl-3-piperidyl benzilate;

(Y) Psilocybin;

(Z) Psilocyn;

(AA) Tetrahydrocannabinols, naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: 1 cis or trans tetrahydrocannabinol, and their optical isomers 6 cis or trans tetrahydrocannabinol, and their optical isomers 3,4 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered;

(BB) Ethylamine analog of phencyclidine, some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(CC) Pyrrolidine analog of phencyclidine, some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(DD) Thiophene analog of phencyclidine, some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

(EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(C) Fenethylline;

(D) Methcathinone, some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of optical isomers;

(E) (ñ)cis-4-methylaminorex ((ñ)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(F) N-ethylamphetamine; and

(G) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(vi) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their optical isomers, salts, and salts of isomers, subject to temporary emergency scheduling:

(A) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

(B) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl).

(vii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including:

(I) Raw opium;

(II) Opium extracts;

(III) Opium fluid;

(IV) Powdered opium;

(V) Granulated opium;

(VI) Tincture of opium;

(VII) Codeine;

(VIII) Ethylmorphine;

(IX) Etorphine hydrochloride;

(X) Hydrocodone;

(XI) Hydromorphone;

(XII) Metopon;

(XIII) Morphine;

(XIV) Oxycodone;

(XV) Oxymorphone; and

(XVI) Thebaine;

(B) Any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these substances may not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives, and salts of isomers and derivatives, whether derived from the coca plant or synthetically produced, except the substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation, except dextrorphan and levopropoxyphene:

(A) Alfentanil;

(B) Alphaprodine;

(C) Anileridine;

(D) Bezitramide;

(E) Bulk dextropropoxyphene (nondosage forms);

(F) Carfentanil;

(G) Dihydrocodeine;

(H) Diphenoxylate;

(I) Fentanyl;

(J) Isomethadone;

(K) Levo-alphacetylmethadol, some other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(L) Levomethorphan;

(M) Levorphanol;

(N) Metazocine;

(O) Methadone;

(P)Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(Q)Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(R) Pethidine (meperidine);

(S)Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(T)Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(U) Pethidine–Intermediate–C, 1–methyl–4–phenylpiperidine–4–carboxylic acid;

(V) Phenazocine;

(W) Piminodine;

(X) Racemethorphan;

(Y) Racemorphan;

(Z) Remifentanil; and

(AA) Sufentanil.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Methamphetamine, its salts, isomers, and salts of its isomers;

(C) Phenmetrazine and its salts; and

(D) Methylphenidate.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amobarbital;

(B) Glutethimide;

(C) Pentobarbital;

(D) Phencyclidine;

(E) Phencyclidine immediate precursors: 1–phenylcyclohexylamine and 1–piperidinocyclohexanecarbonitrile (PCC); and

(F) Secobarbital.

(v) (A) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of Phenylacetone.

(B) Some of these substances may be known by trade or other names: phenyl–2–propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.

(vi) Nabilone, another name for nabilone: (ñ)–trans–3–(1,1–dimethylheptyl)–6,6a,7,8,10,10a –hexahydro–1–hydroxy–6, 6–dimethyl–9H–dibenzo[b,d]pyran–9–one.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitive composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine; and

(E) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chlorhexadol;

(E) Buprenorphine;

(F) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under the federal Food, Drug, and Cosmetic Act, Section 505;

(G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: ñ –2–(2–chlorophenyl)–2–(methylamino)–cyclohexa none;

(H) Lysergic acid;

(I) Lysergic acid amide;

(J) Methyprylon;

(K) Sulfondiethylmethane;

(L) Sulfonethylmethane;

(M) Sulfonmethane; and

(N) Tiletamine and zolazepam or any of their salts, some trade or other names for a tiletamine–zolazepam combination product:

Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product, some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(iv) Nalorphine.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that promotes muscle growth:

(A) Boldenone;

(B) Chlorotestosterone (4-chlortestosterone);

(C) Clostebol;

(D) Dehydrochlormethyltestosterone;

(E) Dihydrotestosterone (4-dihydrotestosterone);

(F) Drostanolone;

(G) Ethylestrenol;

(H) Fluoxymesterone;

(I) Formebulone (formebolone);

(J) Mesterolone;

(K) Methandienone;

(L) Methandranone;

(M) Methandriol;

(N) Methandrostenolone;

(O) Methenolone;

(P) Methyltestosterone;

(Q) Mibolerone;

(R) Nandrolone;

(S) Norethandrolone;

(T) Oxandrolone;

(U) Oxymesterone;

(V) Oxymetholone;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone; and

(AA) Trenbolone.

(vii) Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Secretary of Health and Human Services for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Alprazolam;

(B) Barbital;

(C) Bromazepam;

(D) Butorphanol;

(E) Camazepam;

(F) Carisoprodol;

(G) Chloral betaine;

(H) Chloral hydrate;

(I) Chlordiazepoxide;

(J) Clobazam;

(K) Clonazepam;

(L) Clorazepate;

(M) Clotiazepam;

(N) Cloxazolam;

(O) Delorazepam;

(P) Diazepam;

(Q) Dichloralphenazone;

(R) Estazolam;

(S) Ethchlorvynol;

(T) Ethinamate;

(U) Ethyl loflazepate;

(V) Fludiazepam;

(W) Flunitrazepam;

(X) Flurazepam;

(Y) Halazepam;

(Z) Haloxazolam;

(AA) Ketazolam;

(BB) Loprazolam;

(CC) Lorazepam;

(DD) Lormetazepam;

(EE) Mebutamate;

(FF) Medazepam;

(GG) Meprobamate;

(HH) Methohexital;

(II) Methylphenobarbital (mephobarbital);

(JJ) Midazolam;

(KK) Nimetazepam;

(LL) Nitrazepam;

(MM) Nordiazepam;

(NN) Oxazepam;

(OO) Oxazolam;

(PP) Paraldehyde;

(QQ) Pentazocine;

(RR) Petrichloral;

(SS) Phenobarbital;

(TT) Pinazepam;

(UU) Prazepam;

(VV) Quazepam;

(WW) Temazepam;

(XX) Tetrazepam;

(YY) Triazolam;

(ZZ) Zaleplon; and

(AAA) Zolpidem.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Cathine ((+)-norpseudoephedrine);

(B) Diethylpropion;

(C) Fencamfamine;

(D) Fenproprex;

(E) Mazindol;

(F) Mefenorex;

(G) Modafinil;

(H) Pemoline, including organometallic complexes and chelates thereof;

(I) Phentermine;

(J) Pipradrol;

(K) Sibutramine; and

(L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(e) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid,

which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(vii) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

Section 6. Section 58-37-4.2 is enacted to read:

58-37-4.2. Listed controlled substances.

The following substances, their analogs, homologs, and synthetic equivalents are listed controlled substances:

(1) AM-694;1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone;

(2) CP 47,497 and its C6, C8, and C9 homologs; 2-[(1R,3S)-3-hydroxycyclohexyl] -5-(2-methyloctan-2-yl)phenol;

(3) HU-210; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(4) HU-211; Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(5) JWH-015; (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;

(6) JWH-018; Naphthalen-1-yl-(pentylindol-3-yl)methanone {also known as 1-Pentyl-3-(1-naphthoyl)indole};

(7) JWH-019; 1-hexyl-3-(1-naphthoyl)indole;

(8) JWH-073; Naphthalen-1-yl(1-butylindol-3-yl)methanone {also known as 1-Butyl-3-(1-naphthoyl)indole};

(9) JWH-081; 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl) methanone;

(10) JWH-122; CAS#619294-47-2; (1-Pentyl-3-(4-methyl-1-naphthoyl)indole);

(11) JWH-200; 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl)indole;

(12) JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl)indole;

(13) JWH-251; 2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl) ethanone;

(14) JWH-398; 1-pentyl-3-(4-chloro-1-naphthoyl)indole;

(15) RCS-8; 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole {also known as BTW-8 and SR-18};

(16) 4-methylmethcathinone {also known as mephedrone};

(17) 3,4-methylenedioxypyrovalerone {also known as MDPV};

(18) 3,4-Methylenedioxymethcathinone {also known as methylone};

(19) 4-methoxymethcathinone;

(20) 4-Fluoromethcathinone; and

(21) 3-Fluoromethcathinone.

Section 7. Section 58-37-6 is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal

cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules II through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the person's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of the person's business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest. The division shall not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance. In determining public interest, the division shall consider whether or not the applicant has:

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

(iii) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(iv) past experience in the manufacture of controlled dangerous substances;

(v) established effective controls against diversion; and

(vi) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production,

distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal license denied, suspended, or revoked by competent federal authority and is no longer authorized to engage in the manufacturing, distribution, or dispensing of controlled substances;

(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's

licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) (A) A prescription for a Schedule II substance may not be refilled.

(B) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

(v) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply;

(C) a second or third prescription shall include the date of issuance and the date for dispensing; and

(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

(vi) Each prescription for a controlled substance may contain only one controlled substance per prescription form and may not contain any other legend drug or prescription item.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any

physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (7)(o) or Subsection (10) is subject to a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (7)(j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (7)(o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, or administer, but may not prescribe or dispense, a controlled substance listed in Section 58-37-4.2.

Section 8. Section 58-37-8 is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct which results in any violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(2) Prohibited acts B -- Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

(ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree felony; or

(iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or [~~(2)(a)~~](iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection

58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for any person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions;

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (4)(a)(i) and (ii);

(iv) in or on the grounds of a preschool or child-care facility;

(v) in a public park, amusement park, arcade, or recreation center;

(vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto;

(viii) in or on the grounds of a library;

(ix) within any area that is within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

(x) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d) (i) If the violation is of Subsection (4)(a)(xi):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally

aids another person to commit a violation of Subsection (4)(a)(xi).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of guilty or no contest to a violation of this section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof which shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

[~~(13)~~] (15) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(16) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

Section 9. Section 58-38a-203 is amended to read:

58-38a-203. Duties of the committee.

(1) The committee serves as a consultative and advisory body to the Legislature regarding:

(a) the movement of a controlled substance from one schedule or list to another;

(b) the removal of a controlled substance from any schedule or list; and

(c) the designation of a substance as a controlled substance and the placement of the substance in a designated schedule or list.

(2) On or before September 30 of each year, the committee shall submit to the Health and Human Services Interim Committee a written report:

(a) [~~listing~~] describing any substances recommended by the committee for scheduling, rescheduling, listing, or deletion from the schedules or list by the Legislature; and

(b) stating the reasons for the recommendation.

(3) In advising the Legislature regarding the need to add, delete, relist, or reschedule a substance, the committee shall consider:

(a) the actual or probable abuse of the substance, including:

(i) the history and current pattern of abuse both in Utah and in other states;

(ii) the scope, duration, and significance of abuse;

(iii) the degree of actual or probable detriment to public health which may result from abuse of the substance; and

(iv) the probable physical and social impact of widespread abuse of the substance;

(b) the biomedical hazard of the substance, including:

(i) its pharmacology, including the effects and modifiers of the effects of the substance;

(ii) its toxicology, acute and chronic toxicity, interaction with other substances, whether controlled or not, and the degree to which it may cause psychological or physiological dependence; and

(iii) the risk to public health and the particular susceptibility of segments of the population;

(c) whether the substance is an immediate precursor, as defined in Section 58-37-2, of a substance that is currently a controlled substance;

(d) the current state of scientific knowledge regarding the substance, including whether there is any acceptable means to safely use the substance under medical supervision;

(e) the relationship between the use of the substance and criminal activity, including whether:

(i) persons engaged in illicit trafficking of the substance are also engaged in other criminal activity;

(ii) the nature and relative profitability of manufacturing or delivering the substance encourages illicit trafficking in the substance;

(iii) the commission of other crimes is one of the recognized effects of abuse of the substance; and

(iv) addiction to the substance relates to the commission of crimes to facilitate the continued use of the substance;

(f) whether the substance has been scheduled by other states; and

(g) whether the substance has any accepted medical use in treatment in the United States.

(4) The committee's duties under this chapter do not include tobacco products as defined in Section 59-14-102 or alcoholic beverages as defined in Section 32A-1-105.

Section 10. Section 58-38a-204 is amended to read:

58-38a-204. Guidelines for scheduling or listing drugs.

(1) (a) The committee shall recommend placement of a substance in Schedule I if it finds:

(i) that the substance has high potential for abuse; and

(ii) that an accepted standard has not been established for safe use in treatment for medical purposes.

(b) The committee may recommend placement of a substance in Schedule I under Section 58-37-4 if it finds that the substance is classified as a controlled substance in Schedule I under federal law.

(2) (a) The committee shall recommend placement of a substance in Schedule II if it finds that:

(i) the substance has high potential for abuse;

(ii) the substance has a currently accepted medical use in treatment in the United States, or a currently accepted medical use subject to severe restrictions; and

(iii) the abuse of the substance may lead to severe psychological or physiological dependence.

(b) The committee may recommend placement of a substance in Schedule II if it finds that the substance is classified as a controlled substance in Schedule II under federal law.

(3) (a) The committee shall recommend placement of a substance in Schedule III if it finds that:

(i) the substance has a potential for abuse that is less than the potential for substances listed in Schedules I and II;

(ii) the substance has a currently accepted medical use in treatment in the United States; and

(iii) abuse of the substance may lead to moderate or low physiological dependence or high psychological dependence.

(b) The committee may recommend placement of a substance in Schedule III if it finds that the

substance is classified as a controlled substance in Schedule III under federal law.

(4) (a) The committee shall recommend placement of a substance in Schedule IV if it finds that:

(i) the substance has a low potential for abuse relative to substances in Schedule III;

(ii) the substance has currently accepted medical use in treatment in the United States; and

(iii) abuse of the substance may lead to limited physiological dependence or psychological dependence relative to the substances in Schedule III.

(b) The committee may recommend placement of a substance in Schedule IV if it finds that the substance is classified as a controlled substance in Schedule IV under federal law.

(5) (a) The committee shall recommend placement of a substance in Schedule V if it finds that:

(i) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(ii) the substance has currently accepted medical use in treatment in the United States; and

(iii) the substance has limited physiological dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

(b) The committee may recommend placement of a substance in Schedule V under this chapter if it finds that the substance is classified as a controlled substance in Schedule V under federal law.

(6) The committee may recommend placement of a substance on a controlled substance list if it finds that the substance has a potential for abuse and that an accepted standard has not been established for safe use in treatment for medical purposes.

Section 11. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override, except that the amendments to Section 58-37-2 (Effective 07/01/11) take effect on July 1, 2011.

CHAPTER 13
H. B. 22
Passed February 7, 2011
Approved March 7, 2011
Effective May 10, 2011

FIRE PREVENTION AND FIREWORKS ACT AMENDMENTS

Chief Sponsor: James A. Dunnigan
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Fire Prevention and Fireworks Act to address definitions and fireworks.

Highlighted Provisions:

This bill:

- **modifies definitions;**
- **repeals certain testing and approval requirements;**
- **modifies times for sale and discharge of fireworks;**
- **addresses state fire code; and**
- **makes technical and conforming amendments.**

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 203, Codification of State Construction and Fire Codes, so that specific language in H.B. 203 supersedes specified amendments in this bill.

Utah Code Sections Affected:

AMENDS:

53-7-202, as last amended by Laws of Utah 2010, Chapters 61 and 310
53-7-222, as last amended by Laws of Utah 2010, Chapters 61 and 324
53-7-225, as renumbered and amended by Laws of Utah 1993, Chapter 234

Utah Code Sections Affected by Coordination Clause:

53-7-222, as last amended by Laws of Utah 2010, Chapters 61 and 324

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

Section 1. Section 53-7-202 is amended to read:

53-7-202. Definitions.

As used in this part:

(1) "Agricultural and wildlife fireworks" means a class C dangerous explosive that:

(a) uses sound or light when deployed; and

(b) is designated to prevent crop damage or unwanted animals from entering a specified area.

(2) "Class A explosive" means a division 1.1 or 1.2 explosive as defined by the United States Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(3) "Class B explosive" means a division 1.2 or 1.3G explosive as defined by the United States Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(4) "Class C explosive" means a division 1.4G explosive as defined by the United States Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(5) [~~(a)~~] "Class C common state approved explosive" means a [~~class C explosive that is:~~] firework that:

(a) is purchased at retail for use by a consumer; and

(b) is not a Class C dangerous explosive.

[~~(i) a cardboard or heavy paper cylindrical tube or cone that:~~]

[~~(A) produces a shower of color and sparks that reach a maximum height of 15 feet;~~]

[~~(B) may whistle or pop; and~~]

[~~(C) is not designed to explode or leave the ground;~~]

[~~(ii) a pyrotechnic wheel device that:~~]

[~~(A) may be attached to a post or tree; and~~]

[~~(B) contains up to six "driver" units or tubes;~~]

[~~(iii) any device that:~~]

[~~(A) spins, jumps, or emits popping sounds when placed on the ground;~~]

[~~(B) does not exceed a height of 15 feet when discharged; and~~]

[~~(C) does not travel laterally more than 10 feet on a smooth surface when discharged;~~]

[~~(iv) a morning glory, suzuki, or flitter sparkler; and~~]

[~~(v) a single tube day type parachute that does not carry any flare or flame upon descent.~~]

[~~(b) "Class C common state approved explosive" does not mean:~~]

[~~(i) class C dangerous explosives; or~~]

[~~(ii) exempt explosives.~~]

(6) (a) "Class C dangerous explosive" means a class C explosive that is:

(i) a firecracker, cannon cracker, ground salute, M-80, cherry bomb, or other similar explosive;

(ii) (A) a skyrocket [~~or any device other than a model rocket that uses combustible or explosive material and rises more than 15 feet when discharged~~];

(B) a missile type rocket;

(C) a single shot, or reloadable aerial shell; or

(D) a rocket similar to one described in Subsections (6)(a)(ii)(A) through (C), including an aerial salute, a flash shell, a comet, a mine, or a cake containing more than 500 grams of pyrotechnic composition; or

(iii) (A) a bottle rocket;

(B) a roman candle [~~or other device that discharges balls of fire over 15 feet in height~~];

[~~(iv) a tube or cone aerial firework that propels comets, shells, salutes, flash shells, or similar devices more than 15 feet into the air; and~~]

[~~(v) a chaser, whistler, or other device that darts or travels more than 10 feet laterally on a smooth surface or exceeds 15 feet in height when discharged.~~]

(C) a rocket mounted on a wire or stick; or

(D) a device containing a rocket described in this Subsection (6)(a)(iii).

(b) A "class C dangerous explosive" does not mean[~~: (i) class C common state approved explosives; or (ii)~~] exempt explosives.

(7) (a) "Display fireworks" means large firework devices that consist of explosive materials that are intended for use in outdoor aerial fireworks displays to produce visible or audible effects by combustion, deflagration, or detonation.

(b) "Display fireworks" includes aerial shells, salutes, roman candles, flash shells, comets, mines, and other similar explosives.

(8) (a) "Display operator" means a person licensed under Section 53-7-223 and who is responsible for site selection, setting up, permits, overseeing assistants and support personnel, and discharging display fireworks outdoors in situations where the audience maintains a specific distance separating it from the display fireworks being discharged.

(b) "Display operator" does not mean a fire department.

(9) "Exempt explosive" means a model rocket, toy pistol cap, emergency signal flare, snake or glow worm, party popper, trick noisemaker, match, and wire sparkler under 12 inches in length.

(10) (a) "Fireworks" means:

(i) class C explosives;

(ii) class C dangerous explosives; and

(iii) class C common state approved explosives.

(b) "Fireworks" does not mean:

(i) exempt explosives;

(ii) class A explosives; or

(iii) class B explosives.

(11) "Flame effects" means the combustion of flammable solids, liquids, or gases to produce thermal, physical, visual, or audible phenomena before an audience.

(12) (a) "Flame effects operator" means a person licensed under Section 53-7-223 who, regarding flame effects, is responsible for:

(i) storage, setup, operations, teardown, devices, equipment, overseeing assistants and support personnel, and preventing accidental discharge; and

(ii) completion of the sequence of control system functions that release the fuel for ignition to cause combustion and create the flame effects.

(b) (i) "Flame effects operator" does not include a person who participates in a meeting, as limited under Subsection (12)(b)(ii), with other persons solely to receive training, to practice, or provide instruction regarding flame effects performance.

(ii) A meeting under Subsection (12)(b)(i) may include a nonpaying and unsolicited audience of not more than 25 persons.

(13) "Importer" means a person who brings class B or class C explosives into Utah for the general purpose of:

(a) resale or use within the state; or

(b) exportation to other states.

(14) (a) "Pyrotechnic" means any composition or device manufactured or used to produce a visible or audible effect by combustion, deflagration, or detonation.

(b) "Pyrotechnic" does not mean exempt explosives.

(15) "Retail seller" means a person who sells class C common state approved explosives to the public during the period authorized under Section 53-7-225.

(16) "Special effects" means a visual or audible effect caused by chemical mixtures that produce a controlled, self-sustaining, and self-controlled exothermic chemical reaction that results in heat, gas, sound, or light and may also create an illusion.

(17) "Special effects operator" means a person licensed under Section 53-7-223 who is responsible for setting up, permits, overseeing assistants and support personnel, analyzing potential hazards, setting clearances, and discharging pyrotechnic devices, either indoor or outdoor, where the audience is allowed to be in closer proximity to the pyrotechnic devices than the audience separation distance generally required for display fireworks.

(18) "Trick noisemaker" includes a:

(a) tube or sphere containing pyrotechnic composition that produces a white or colored smoke as its primary effect when ignited; and

(b) device that produces a small report intended to surprise the user, including a:

(i) "booby trap," which is a small tube with a string protruding from both ends that ignites the friction sensitive composition in the tube when the string is pulled;

(ii) "snapper," which is a small paper-wrapped device containing a minute quantity of explosive composition coated on bits of sand that explodes producing a small report;

(iii) "trick match," which is a kitchen or book match coated with a small quantity of explosive or

pyrotechnic composition that produces a small shower of sparks when ignited;

(iv) "cigarette load," which is a small wooden peg coated with a small quantity of explosive composition that produces a small report when ignited; and

(v) "auto burglar alarm," which is a tube that:

(A) contains pyrotechnic composition that produces a loud whistle and smoke when ignited;

(B) may contain a small quantity of explosive to produce a small explosive noise; and

(C) is ignited by a squib.

(19) "Unclassified fireworks" means:

(a) a pyrotechnic device that is used, given away, or offered for sale, that has not been tested, approved, and classified by the United States Department of Transportation;

(b) an approved device that has been altered or redesigned since obtaining approval by the United States Department of Transportation; and

(c) a pyrotechnic device that is being tested by a manufacturer, importer, or wholesaler before receiving approval by the United States Department of Transportation.

(20) "Wholesaler" means:

(a) a person who sells class C common state approved explosives to a retailer; or

(b) a person who sells class B explosives or class C dangerous explosives for display use.

Section 2. Section 53-7-222 is amended to read:

53-7-222. Restrictions on the sale or use of fireworks.

[~~(1) (a) The division shall test and approve a representative sample of each class C common state-approved explosive before the explosive may be sold to the public.~~]

[~~(b) The division shall publish a list of all class C explosives that are approved for sale to the public each year.~~]

[~~(2)~~] (1) (a) Except as provided in Subsection [~~(2)~~] (1)(b), class C dangerous explosives may not be possessed, discharged, sold, or offered for retail sale.

(b) (i) The following persons may purchase, possess, or discharge class C dangerous explosives:

(A) display operators and special effects operators who receive a license from the division in accordance with Section 53-7-223 and approval from their local licensing authority in accordance with Section 11-3-3.5; and

(B) operators approved by the Division of Wildlife Resources or Department of Agriculture and Food to discharge agricultural and wildlife fireworks.

(ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and offer to sell class C dangerous explosives.

[~~(3)~~] (2) Unclassified fireworks may not be sold, or offered for sale.

(3) (a) As used in this section, "NFPA" means the edition of the National Fire Protection Association adopted by the state fire code.

(b) For purposes of the portion of the state fire code that includes the amendments and additions to NFPA 1124, and subject to the amendments and additions made in the state fire code, the board shall:

(i) by rule, adopt standards for the retail sales of consumer fireworks; and

(ii) in adopting the standards described in Subsection (3)(a)(i), consider the applicable provisions of NFPA 1124, Chapter 7, Retail Sales of Consumer Fireworks.

Section 3. Section 53-7-225 is amended to read:

53-7-225. Times for sale and discharge of fireworks.

Class C common state approved explosives may be:

(1) sold each year:

(a) [~~after June 19 and before~~] beginning on June 26 and ending on July 26;

(b) [~~after December 19 and before January 3~~] beginning on December 26 and ending on January 1; and

(c) [~~15~~] three days before and on the Chinese New Year; and

(2) discharged [~~three days before, on the day of, and three days following~~] each year:

[~~(a) July 4;~~]

[~~(b) July 24;~~]

(a) beginning on June 26 and ending on July 26;

[~~(c)~~] (b) on January 1 and December 31; and

[~~(d)~~] (c) the day before and on the Chinese New Year.

Section 4. Coordinating H.B. 22 with H.B. 203 -- Providing for superseding amendments.

If this H.B. 22, Fire Prevention and Fireworks Act Amendments, and H.B. 203, Codification of State Construction and Fire Codes, both pass it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, not give effect to Subsection 53-7-222(3) enacted in this H.B. 22.

CHAPTER 14
H. B. 203
Passed February 18, 2011
Approved March 7, 2011
Effective July 1, 2011

CODIFICATION OF STATE CONSTRUCTION AND FIRECODES

Chief Sponsor: Michael T. Morley
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill enacts a new title to codify the existing State Construction Code and State Fire Code.

Highlighted Provisions:

This bill:

- codifies the State Construction Code;
- codifies the State Fire Code;
- updates the NFPA referenced standards in the State Construction Code and State Fire Code;
- provides local amendments for fire sprinkler requirements for the Town of Brian Head in the State Construction Code;
- addresses codes incorporated by reference into the State Fire Code;
- addresses emergency evacuation drill requirements in the State Fire Code;
- addresses door closers on classroom doors as part of the State Fire Code;
- addresses use of antifreeze in automatic sprinklers as part of the State Fire Code;
- addresses provisions in the State Fire Code related to liquified petroleum gas;
- includes provisions related to procedures to adopt and requirements related to the administration of the State Construction Code and State Fire Code; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

This bill coordinates with H.B. 260, Mechanics' Liens Revisions, to technically merge substantive amendments.

Utah Code Sections Affected:

AMENDS:

9-4-102, as last amended by Laws of Utah 2004, Chapter 18
10-8-85.5, as last amended by Laws of Utah 2008, Chapter 78
10-9a-514, as last amended by Laws of Utah 2010, Chapter 378
11-36-102 (Effective 05/11/11), as last amended by Laws of Utah 2010, Chapter 203
11-45-102, as enacted by Laws of Utah 2010, Chapter 72
17-27a-513, as renumbered and amended by Laws of Utah 2005, Chapter 254
26-15-3, as last amended by Laws of Utah 2010, Chapter 310
26A-1-113, as last amended by Laws of Utah 2009, Chapter 339
26A-1-114, as last amended by Laws of Utah 2009, Chapters 304 and 339
38-11-102, as last amended by Laws of Utah 2007, Chapter 84
53-7-102, as last amended by Laws of Utah 2010, Chapters 310 and 324
53-7-204, as last amended by Laws of Utah 2010, Chapters 61 and 310
57-23-4, as enacted by Laws of Utah 1991, Chapter 262
58-3a-102, as enacted by Laws of Utah 1996, Chapter 260
58-3a-602, as enacted by Laws of Utah 1996, Chapter 260
58-22-102, as last amended by Laws of Utah 2008, Chapter 277
58-22-602, as enacted by Laws of Utah 1996, Chapter 259
58-53-602, as enacted by Laws of Utah 1998, Chapter 191
58-55-102, as last amended by Laws of Utah 2010, Chapters 27, 53, and 227
58-55-305, as last amended by Laws of Utah 2010, Chapters 27, 227, and 310
58-56-1, as enacted by Laws of Utah 1989, Chapter 269
58-56-3, as last amended by Laws of Utah 2010, Chapters 76, 310, and 372
58-56-9, as last amended by Laws of Utah 2010, Chapters 310 and 391
58-56-17.5, as last amended by Laws of Utah 2010, Chapter 310
59-12-102, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263
63A-5-206, as last amended by Laws of Utah 2010, Chapter 338
70D-2-102, as renumbered and amended by Laws of Utah 2009, Chapter 72
73-3-1.5, as enacted by Laws of Utah 2010, Chapter 19

ENACTS:

15A-1-101, Utah Code Annotated 1953
15A-1-102, Utah Code Annotated 1953
15A-1-103, Utah Code Annotated 1953
15A-1-201, Utah Code Annotated 1953
15A-1-202, Utah Code Annotated 1953
15A-1-203, Utah Code Annotated 1953
15A-1-204, Utah Code Annotated 1953
15A-1-205, Utah Code Annotated 1953
15A-1-206, Utah Code Annotated 1953
15A-1-207, Utah Code Annotated 1953
15A-1-208, Utah Code Annotated 1953
15A-1-209, Utah Code Annotated 1953
15A-1-210, Utah Code Annotated 1953
15A-1-301, Utah Code Annotated 1953
15A-1-302, Utah Code Annotated 1953
15A-1-303, Utah Code Annotated 1953
15A-1-304, Utah Code Annotated 1953
15A-1-305, Utah Code Annotated 1953
15A-1-306, Utah Code Annotated 1953
15A-1-401, Utah Code Annotated 1953
15A-1-402, Utah Code Annotated 1953
15A-1-403, Utah Code Annotated 1953
15A-2-101, Utah Code Annotated 1953
15A-2-102, Utah Code Annotated 1953
15A-2-103, Utah Code Annotated 1953
15A-2-104, Utah Code Annotated 1953

15A-2-105, Utah Code Annotated 1953
15A-3-101, Utah Code Annotated 1953
15A-3-102, Utah Code Annotated 1953
15A-3-103, Utah Code Annotated 1953
15A-3-104, Utah Code Annotated 1953
15A-3-105, Utah Code Annotated 1953
15A-3-106, Utah Code Annotated 1953
15A-3-107, Utah Code Annotated 1953
15A-3-108, Utah Code Annotated 1953
15A-3-109, Utah Code Annotated 1953
15A-3-110, Utah Code Annotated 1953
15A-3-111, Utah Code Annotated 1953
15A-3-112, Utah Code Annotated 1953
15A-3-113, Utah Code Annotated 1953
15A-3-201, Utah Code Annotated 1953
15A-3-202, Utah Code Annotated 1953
15A-3-203, Utah Code Annotated 1953
15A-3-204, Utah Code Annotated 1953
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15A-3-306, Utah Code Annotated 1953
15A-3-307, Utah Code Annotated 1953
15A-3-308, Utah Code Annotated 1953
15A-3-309, Utah Code Annotated 1953
15A-3-310, Utah Code Annotated 1953
15A-3-311, Utah Code Annotated 1953
15A-3-312, Utah Code Annotated 1953
15A-3-313, Utah Code Annotated 1953
15A-3-314, Utah Code Annotated 1953
15A-3-401, Utah Code Annotated 1953
15A-3-501, Utah Code Annotated 1953
15A-3-601, Utah Code Annotated 1953
15A-3-701, Utah Code Annotated 1953
15A-3-801, Utah Code Annotated 1953
15A-4-101, Utah Code Annotated 1953
15A-4-102, Utah Code Annotated 1953
15A-4-103, Utah Code Annotated 1953
15A-4-104, Utah Code Annotated 1953
15A-4-105, Utah Code Annotated 1953
15A-4-106, Utah Code Annotated 1953
15A-4-107, Utah Code Annotated 1953
15A-4-201, Utah Code Annotated 1953
15A-4-202, Utah Code Annotated 1953
15A-4-203, Utah Code Annotated 1953
15A-4-204, Utah Code Annotated 1953
15A-4-205, Utah Code Annotated 1953
15A-4-206, Utah Code Annotated 1953
15A-4-207, Utah Code Annotated 1953
15A-4-301, Utah Code Annotated 1953
15A-4-302, Utah Code Annotated 1953
15A-4-303, Utah Code Annotated 1953
15A-4-401, Utah Code Annotated 1953
15A-4-501, Utah Code Annotated 1953
15A-4-601, Utah Code Annotated 1953
15A-4-701, Utah Code Annotated 1953
15A-5-101, Utah Code Annotated 1953
15A-5-102, Utah Code Annotated 1953
15A-5-103, Utah Code Annotated 1953
15A-5-201, Utah Code Annotated 1953
15A-5-202, Utah Code Annotated 1953
15A-5-203, Utah Code Annotated 1953
15A-5-204, Utah Code Annotated 1953
15A-5-205, Utah Code Annotated 1953
15A-5-206, Utah Code Annotated 1953
15A-5-207, Utah Code Annotated 1953
15A-5-301, Utah Code Annotated 1953
15A-5-302, Utah Code Annotated 1953
15A-5-303, Utah Code Annotated 1953
15A-5-401, Utah Code Annotated 1953
58-56-15.1, Utah Code Annotated 1953

REPEALS:

53-7-106, as last amended by Laws of Utah 2010, Chapter 310
58-56-4, as last amended by Laws of Utah 2010, Chapters 310 and 372
58-56-5, as last amended by Laws of Utah 2010, Chapters 286 and 310
58-56-6, as last amended by Laws of Utah 2010, Chapter 310
58-56-7, as last amended by Laws of Utah 2010, Chapter 310
58-56-8, as last amended by Laws of Utah 2002, Chapter 75
58-56-11, as last amended by Laws of Utah 1997, Chapter 196
58-56-12, as last amended by Laws of Utah 2010, Chapter 310
58-56-13, as last amended by Laws of Utah 2010, Chapter 310
58-56-14, as last amended by Laws of Utah 2010, Chapter 310
58-56-15, as last amended by Laws of Utah 2010, Chapter 310
58-56-19, as last amended by Laws of Utah 2009, Chapter 50
58-56-20, as last amended by Laws of Utah 2010, Chapter 310
58-56-21, as last amended by Laws of Utah 2010, Chapter 310

Utah Code Sections Affected by Coordination Clause:

15A-1-209, Utah Code Annotated 1953

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

Section 1. Section 9-4-102 is amended to read:

9-4-102. Definitions.

As used in this chapter:

(1) "Accessible housing" means housing which has been constructed or modified to be accessible, as described in the [~~construction codes adopted under Section 58-56-4~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) "Director" means the director of the division.

(3) "Division" means the Division of Housing and Community Development.

Section 2. Section 10-8-85.5 is amended to read:

10-8-85.5. "Rental dwelling" defined -- Municipality may require a business license or a regulatory business license and inspections -- Exception.

(1) As used in this section, "rental dwelling" means a building or portion of a building that is:

(a) used or designated for use as a residence by one or more persons; and

(b) (i) available to be rented, loaned, leased, or hired out for a period of one month or longer; or

(ii) arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one month or longer.

(2) (a) The legislative body of a municipality may by ordinance require the owner of a rental dwelling located within the municipality:

(i) to obtain a business license pursuant to Section 10-1-203; or

(ii) (A) to obtain a regulatory business license to operate and maintain the rental dwelling; and

(B) to allow inspections of the rental dwelling as a condition of obtaining a regulatory business license.

(b) A municipality may not require an owner of multiple rental dwellings or multiple buildings containing rental dwellings to obtain more than one regulatory business license for the operation and maintenance of those rental dwellings.

(c) (i) Notwithstanding Subsection (2)(b), a municipality may, until August 31, 2008, impose upon an owner subject to Subsection (2)(a) a reasonable inspection fee for the inspection of each rental dwelling owned by that owner.

(ii) Beginning September 1, 2008, a municipality may not charge a fee for the inspection of a rental dwelling.

(d) If a municipality's inspection of a rental dwelling, allowed under Subsection (2)(a)(ii)(B), approves the rental dwelling for purposes of a regulatory business license, a municipality may not inspect that rental dwelling during the next 36 months, unless the municipality has reasonable cause to believe that a condition in the rental dwelling is in violation of an applicable law or ordinance.

(3) A municipality may not:

(a) interfere with the ability of an owner of a rental dwelling to contract with a tenant concerning the payment of the cost of a utility or municipal service provided to the rental dwelling; or

(b) except as required under [~~Title 58, Chapter 56, Utah Uniform Building Act~~] the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act, for a structural change to the rental dwelling, or as required in an ordinance adopted before January 1, 2008, require the owner of a rental dwelling to retrofit the rental dwelling with or install in the rental dwelling a safety feature that was not required when the rental dwelling was constructed.

(4) Nothing in this section shall be construed to affect the rights and duties established under Title 57, Chapter 22, Utah Fit Premises Act, or to restrict a municipality's ability to enforce its generally applicable health ordinances or building code, a local health department's authority under Title 26A, Chapter 1, Local Health Departments, or the Utah Department of Health's authority under Title 26, Utah Health Code.

Section 3. Section 10-9a-514 is amended to read:

10-9a-514. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section [~~58-56-3~~] 15A-1-302, except that the manufactured home shall be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations shall be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any land use zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants, applicable to a single family residence within that zone or area.

(3) A municipality may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

Section 4. Section 11-36-102 (Effective 05/11/11) is amended to read:

11-36-102 (Effective 05/11/11). Definitions.

As used in this chapter:

(1) "Building permit fee" means the fees charged to enforce [~~the uniform codes adopted pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater than the fees indicated in the appendix to the International Building Code~~] the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) "Capital facilities plan" means the plan required by Section 11-36-201.

(3) "Charter school" includes:

(a) an operating charter school;

(b) an applicant for a charter school whose application has been approved by a chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(4) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure,

or any changes in the use of land that creates additional demand and need for public facilities.

(5) "Development approval" means:

(a) except as provided in Subsection (5)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity;

(b) development activity, for a public entity that may develop without written authorization from a local political subdivision;

(c) a written agreement between a local political subdivision and a public water supplier, as defined in Section 73-1-4, or a private water company:

(i) to reserve:

(A) a water right;

(B) system capacity; or

(C) a distribution facility; or

(ii) to deliver for new development:

(A) culinary water; or

(B) irrigation water; or

(d) a written agreement between a local political subdivision and a sanitary sewer authority, as defined in Section 10-9a-103:

(i) to reserve:

(A) sewer collection capacity; or

(B) treatment capacity; or

(ii) to provide sewer service for a new development.

(6) "Enactment" means:

(a) a municipal ordinance, for a municipality;

(b) a county ordinance, for a county; and

(c) a governing board resolution, for a local district, special service district, or private entity.

(7) "Encumber" means:

(a) a pledge to retire a debt; or

(b) an allocation to a current purchase order or contract.

(8) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility system of a municipality, county, local district, special service district, or private entity.

(9) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public facilities.

(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

(10) (a) "Local political subdivision" means a county, a municipality, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(b) "Local political subdivision" does not mean a school district, whose impact fee activity is governed by Section 53A-20-100.5.

(11) "Private entity" means an entity with private ownership that provides culinary water that is required to be used as a condition of development.

(12) (a) "Project improvements" means site improvements and facilities that are:

(i) planned and designed to provide service for development resulting from a development activity;

(ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity; and

(iii) not identified or reimbursed as a system improvement.

(b) "Project improvements" does not mean system improvements.

(13) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

(14) "Public facilities" means only the following capital facilities that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity:

(a) water rights and water supply, treatment, and distribution facilities;

(b) wastewater collection and treatment facilities;

(c) storm water, drainage, and flood control facilities;

(d) municipal power facilities;

(e) roadway facilities;

(f) parks, recreation facilities, open space, and trails; and

(g) public safety facilities.

(15) (a) "Public safety facility" means:

(i) a building constructed or leased to house police, fire, or other public safety entities; or

(ii) a fire suppression vehicle costing in excess of $500,000.

(b) "Public safety facility" does not mean a jail, prison, or other place of involuntary incarceration.

(16) (a) "Roadway facilities" means streets or roads that have been designated on an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all necessary appurtenances.

(b) "Roadway facilities" includes associated improvements to federal or state roadways only when the associated improvements:

(i) are necessitated by the new development; and

(ii) are not funded by the state or federal government.

(c) "Roadway facilities" does not mean federal or state roadways.

(17) (a) "Service area" means a geographic area designated by a local political subdivision on the basis of sound planning or engineering principles in which a defined set of public facilities provide service within the area.

(b) "Service area" may include the entire local political subdivision.

(18) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(19) (a) "System improvements" means:

(i) existing public facilities that are:

(A) identified in the impact fee analysis under Section 11-36-201; and

(B) designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in the impact fee analysis under Section 11-36-201 that are intended to provide services to service areas within the community at large.

(b) "System improvements" does not mean project improvements.

Section 5. Section 11-45-102 is amended to read:

11-45-102. Definitions.

As used in this section:

(1) "Board" means the Board of the Utah Geological Survey.

(2) "Energy code" means the energy efficiency code adopted under Section [~~58-56-4~~] 15A-1-204.

(3) (a) "Energy efficiency project" means:

(i) for an existing building, a retrofit to improve energy efficiency; or

(ii) for a new building, an enhancement to improve energy efficiency beyond the minimum required by the energy code.

(b) "Energy efficiency projects" include the following expenses:

(i) construction;

(ii) engineering;

(iii) energy audit; or

(iv) inspection.

(4) "Fund" means the Energy Efficiency Fund created in Part 2, Energy Efficiency Fund.

(5) "Political subdivision" means a county, city, town, or school district.

Section 6. Section 15A-1-101 is enacted to read:

TITLE 15A. STATE CONSTRUCTION AND FIRE CODES ACT

CHAPTER 1. GENERAL CHAPTER

Part 1. General Provisions

15A-1-101. Titles.

(1) This title is known as the "State Construction and Fire Codes Act."

(2) This chapter is known as "General Chapter."

Section 7. Section 15A-1-102 is enacted to read:

15A-1-102. Definitions.

As used in this title:

(1) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

(2) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103, except as provided in:

(a) Part 4, State Fire Code Administration Act; and

(b) Chapter 5, State Fire Code Act.

(3) "State Construction Code" means the State Construction Code adopted by:

(a) Chapter 2, Adoption of State Construction Code;

(b) Chapter 3, Statewide Amendments Incorporated as Part of State Construction Code; and

(c) Chapter 4, Local Amendments Incorporated as Part of State Construction Code.

(4) "State Fire Code" means the State Fire Code adopted by Chapter 5, State Fire Code Act.

(5) "Utah Code" means the Utah Code Annotated (1953), as amended.

Section 8. Section 15A-1-103 is enacted to read:

15A-1-103. Formatting powers.

(1) As part of the division's compliance with Section 15A-1-205, the division may modify the format of the State Construction Code to provide accessibility to users of the State Construction Code.

(2) Consistent with Part 4, State Fire Code Administration Act, and Title 53, Chapter 7, Utah Fire Prevention and Safety Act, the State Fire Marshall Division under the direction of the board may modify the format of the State Fire Code to provide accessibility to users of the State Fire Code.

Section 9. Section 15A-1-201 is enacted to read:

Part 2. State Construction Code Administration Act.

15A-1-201. Title.

This part is known as the "State Construction Code Administration Act."

Section 10. Section 15A-1-202 is enacted to read:

15A-1-202. Definitions.

As used in this chapter:

(1) "Agricultural use" means a use that relates to the tilling of soil and raising of crops, or keeping or raising domestic animals.

(2) (a) "Approved code" means a code, including the standards and specifications contained in the code, approved by the division under Section 15A-1-204 for use by a compliance agency.

(b) "Approved code" does not include the State Construction Code.

(3) "Building" means a structure used or intended for supporting or sheltering any use or occupancy and any improvements attached to it.

(4) "Code" means:

(a) the State Construction Code; or

(b) an approved code.

(5) "Commission" means the Uniform Building Code Commission created in Section 15A-1-203.

(6) "Compliance agency" means:

(a) an agency of the state or any of its political subdivisions which issues permits for construction regulated under the codes;

(b) any other agency of the state or its political subdivisions specifically empowered to enforce compliance with the codes; or

(c) any other state agency which chooses to enforce codes adopted under this chapter by authority given the agency under a title other than this part and Part 3, Factory Built Housing and Modular Units Administration Act.

(7) "Construction code" means standards and specifications published by a nationally recognized code authority for use in circumstances described in Subsection 15A-1-204(1), including:

(a) a building code;

(b) an electrical code;

(c) a residential one and two family dwelling code;

(d) a plumbing code;

(e) a mechanical code;

(f) a fuel gas code;

(g) an energy conservation code; and

(h) a manufactured housing installation standard code.

(8) "Legislative action" includes legislation that:

(a) adopts a new State Construction Code;

(b) amends the State Construction Code; or

(c) repeals one or more provisions of the State Construction Code.

(9) "Local regulator" means a political subdivision of the state that is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes.

(10) "Not for human occupancy" means use of a structure for purposes other than protection or comfort of human beings, but allows people to enter the structure for:

(a) maintenance and repair; and

(b) the care of livestock, crops, or equipment intended for agricultural use which are kept there.

(11) "Opinion" means a written, nonbinding, and advisory statement issued by the commission concerning an interpretation of the meaning of the codes or the application of the codes in a specific circumstance issued in response to a specific request by a party to the issue.

(12) "State regulator" means an agency of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

Section 11. Section 15A-1-203 is enacted to read:

15A-1-203. Uniform Building Code Commission -- Unified Code Analysis Council.

(1) There is created a Uniform Building Code Commission to advise the division with respect to the division's responsibilities in administering the codes.

(2) The commission shall consist of 11 members as follows:

(a) one member shall be from among candidates nominated by the Utah League of Cities and Towns and the Utah Association of Counties;

(b) one member shall be a licensed building inspector employed by a political subdivision of the state;

(c) one member shall be a licensed professional engineer;

(d) one member shall be a licensed architect;

(e) one member shall be a fire official;

(f) three members shall be contractors licensed by the state, of which one shall be a general contractor, one an electrical contractor, and one a plumbing contractor;

(g) two members shall be from the general public and have no affiliation with the construction industry or real estate development industry; and

(h) one member shall be from the Division of Facilities Construction Management of the Department of Administrative Services.

(3) (a) The executive director shall appoint each commission member after submitting a nomination to the governor for confirmation or rejection.

(b) If the governor rejects a nominee, the executive director shall submit an alternative nominee until the governor confirms the nomination. An appointment is effective after the governor confirms the nomination.

(4) (a) Except as required by Subsection (4)(b), as terms of commission members expire, the executive director shall appoint each new commission member or reappointed commission member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(5) When a vacancy occurs in the commission membership for any reason, the executive director shall appoint a replacement for the unexpired term.

(6) (a) A commission member may not serve more than two full terms.

(b) A commission member who ceases to serve may not again serve on the commission until after the expiration of two years from the date of cessation of service.

(7) A majority of the commission members constitute a quorum and may act on behalf of the commission.

(8) A commission member may not receive compensation or benefits for the commission member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) (a) The commission shall annually designate one of its members to serve as chair of the commission.

(b) The division shall provide a secretary to facilitate the function of the commission and to record the commission's actions and recommendations.

(10) The commission shall:

(a) in accordance with Section 15A-1-204, report to the Business and Labor Interim Committee;

(b) offer an opinion regarding the interpretation of or the application of a code if a person submits a request for an opinion;

(c) act as an appeals board as provided in Section 15A-1-207;

(d) establish advisory peer committees on either a standing or ad hoc basis to advise the commission with respect to matters related to a code, including a committee to advise the commission regarding health matters related to a plumbing code; and

(e) assist the division in overseeing code-related training in accordance with Section 15A-1-209.

(11) A person requesting an opinion under Subsection (10)(b) shall submit a formal request clearly stating:

(a) the facts in question;

(b) the specific citation at issue in a code; and

(c) the position taken by the persons involved in the facts in question.

(12) (a) In a manner consistent with Subsection (10)(d), the commission shall jointly create with the Utah Fire Prevention Board an advisory peer committee known as the "Unified Code Analysis Council" to review fire prevention and construction code issues that require definitive and specific analysis.

(b) The commission and Utah Fire Prevention Board shall jointly, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for:

(i) the appointment of members to the Unified Code Analysis Council; and

(ii) procedures followed by the Unified Code Analysis Council.

Section 12. Section 15A-1-204 is enacted to read:

15A-1-204. Adoption of State Construction Code -- Amendments by commission-- Approved codes -- Exemptions.

(1) (a) The State Construction Code is the construction codes adopted with any modifications in accordance with this section that the state and each political subdivision of the state shall follow.

(b) A person shall comply with the applicable provisions of the State Construction Code when:

(i) new construction is involved; and

(ii) the owner of an existing building, or the owner's agent, is voluntarily engaged in:

(A) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of the building; or

(B) changing the character or use of the building in a manner that increases the occupancy loads, other demands, or safety risks of the building.

(c) On and after July 1, 2010, the State Construction Code is the State Construction Code in effect on July 1, 2010, until in accordance with this section:

(i) a new State Construction Code is adopted; or

(ii) one or more provisions of the State Construction Code are amended or repealed in accordance with this section.

(d) A provision of the State Construction Code may be applicable:

(i) to the entire state; or

(ii) within a county, city, or town.

(2) (a) The Legislature shall adopt a State Construction Code by enacting legislation that adopts a construction code with any modifications.

(b) Legislation enacted under this Subsection (2) shall state that it takes effect on the July 1 after the day on which the legislation is enacted, unless otherwise stated in the legislation.

(c) Subject to Subsection (5), a State Construction Code adopted by the Legislature is the State Construction Code until, in accordance with this section, the Legislature adopts a new State Construction Code by:

(i) adopting a new State Construction Code in its entirety; or

(ii) amending or repealing one or more provisions of the State Construction Code.

(3) (a) The commission shall by no later than November 30 of each year recommend to the Business and Labor Interim Committee whether the Legislature should:

(i) amend or repeal one or more provisions of a State Construction Code; or

(ii) in a year of a regularly scheduled update of a nationally recognized code, adopt a construction code with any modifications.

(b) The commission may recommend legislative action related to the State Construction Code:

(i) on its own initiative;

(ii) upon the recommendation of the division; or

(iii) upon the receipt of a request by one of the following that the commission recommend legislative action related to the State Construction Code:

(A) a local regulator;

(B) a state regulator;

(C) a state agency involved with the construction and design of a building;

(D) the Construction Services Commission;

(E) the Electrician Licensing Board;

(F) the Plumbers Licensing Board; or

(G) a recognized construction-related association.

(4) If the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, the Business and Labor Interim Committee shall prepare legislation for consideration by the Legislature in the next general session that, if passed by the Legislature, would:

(a) adopt a new State Construction Code in its entirety; or

(b) amend or repeal one or more provisions of the State Construction Code.

(5) (a) Notwithstanding Subsection (3), the commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, amend the State Construction Code if the commission determines that waiting for legislative action in the next general legislative session would:

(i) cause an imminent peril to the public health, safety, or welfare; or

(ii) place a person in violation of federal or other state law.

(b) If the commission amends the State Construction Code in accordance with this Subsection (5), the commission shall file with the division:

(i) the text of the amendment to the State Construction Code; and

(ii) an analysis that includes the specific reasons and justifications for the commission's findings.

(c) If the State Construction Code is amended under this Subsection (5), the division shall:

(i) publish the amendment to the State Construction Code in accordance with Section 15A-1-205; and

(ii) notify the Business and Labor Interim Committee of the amendment to the State Construction Code, including a copy of the commission's analysis described in Subsection (5)(b).

(d) If not formally adopted by the Legislature at its next annual general session, an amendment to the State Construction Code under this Subsection (5) is repealed on the July 1 immediately following the next annual general session that follows the adoption of the amendment.

(6) (a) The division, in consultation with the commission, may approve, without adopting, one or more approved codes, including a specific edition of a construction code, for use by a compliance agency.

(b) If the code adopted by a compliance agency is an approved code described in Subsection (6)(a), the compliance agency may:

(i) adopt an ordinance requiring removal, demolition, or repair of a building;

(ii) adopt, by ordinance or rule, a dangerous building code; or

(iii) adopt, by ordinance or rule, a building rehabilitation code.

(7) (a) Except as provided in Subsection (7)(b), a structure used solely in conjunction with agriculture use, and not for human occupancy, is exempt from the permit requirements of the State Construction Code.

(b) (i) Unless exempted by a provision other than Subsection (7)(a), a plumbing, electrical, and mechanical permit may be required when that work is included in a structure described in Subsection (7)(a).

(ii) Unless located in whole or in part in an agricultural protection area created under Title 17, Chapter 41, Agriculture and Industrial Protection

Area, a structure described in Subsection (7)(a) is not exempt from a permit requirement if the structure is located on land that is:

(A) within the boundaries of a city or town, and less than five contiguous acres; or

(B) within a subdivision for which the county has approved a subdivision plat under Title 17, Chapter 27a, Part 6, Subdivisions, and less than two contiguous acres.

Section 13. Section 15A-1-205 is enacted to read:

15A-1-205. Division duties.

(1) (a) The division shall administer the codes adopted or approved under Section 15A-1-204 pursuant to this chapter.

(b) Notwithstanding Subsection (1)(a), the division has no responsibility to:

(i) conduct inspections to determine compliance with the codes;

(ii) issue permits; or

(iii) assess building permit fees.

(2) As part of the administration of the codes, the division shall:

(a) comply with Section 15A-1-206;

(b) schedule appropriate hearings;

(c) maintain and publish for reference:

(i) the current State Construction Code; and

(ii) any approved code; and

(d) publish the opinions of the commission with respect to interpretation and application of the codes.

Section 14. Section 15A-1-206 is enacted to read:

15A-1-206. Code amendment process.

(1) The division, in consultation with the commission, shall establish by rule the procedure under which a request that the commission recommend legislative action is to be:

(a) filed with the division;

(b) reviewed by the commission; and

(c) addressed by the commission in the commission's report to the Business and Labor Interim Committee required by Section 15A-1-204.

(2) The division shall accept a request that the commission recommend legislative action in accordance with Section 15A-1-204 from:

(a) a local regulator;

(b) a state regulator;

(c) a state agency involved with the construction and design of a building;

(d) the Construction Services Commission;

(e) the Electrician Licensing Board;

(f) the Plumbers Licensing Board; or

(g) a recognized construction-related association.

(3) (a) If one or more requests are received in accordance with this section, the division shall hold at least one public hearing before the commission concerning the requests.

(b) The commission shall conduct a public hearing under this Subsection (3) in accordance with the rules of the commission, which may provide for coordinating the public hearing with a meeting of the commission.

(c) After a public hearing described in this Subsection (3), the commission shall prepare a written report of its recommendations made on the basis of the public hearing. The commission shall include the information in the written report prepared under this Subsection (3)(c) in the commission's report to the Business and Labor Interim Committee under Section 15A-1-204.

(4) In making rules required by this chapter, the division shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 15. Section 15A-1-207 is enacted to read:

15A-1-207. Compliance with codes -- Responsibility for inspections -- Appeals.

(1) The compliance agency having jurisdiction over the project and the applicable codes has the responsibility for inspection of construction projects and enforcement of compliance with the codes.

(2) A compliance agency shall furnish in writing to the division a finding by the compliance agency that a licensed contractor, electrician, or plumber has materially violated a code in a manner to jeopardize the public health, safety, and welfare and failed to comply with corrective orders of the compliance agency. A compliance agency shall conduct a primary investigation to determine that, in fact, there has been a material violation of a code jeopardizing the public interest and provide the report of investigation to the division.

(3) (a) A compliance agency shall establish a method of appeal by which a person disputing the application and interpretation of a code may appeal and receive a timely review of the disputed issues in accordance with the codes.

(b) If a compliance agency refuses to establish a method of appeal, the commission shall act as the appeals board and conduct a hearing within 45 days. The findings of the commission are binding.

(4) An appeals board established under this section may not:

(a) interpret the administrative provisions of a code; or

(b) waive a requirement of a code.

Section 16. Section 15A-1-208 is enacted to read:

15A-1-208. Standards for specialized buildings.

(1) This chapter may not be implied to repeal or otherwise affect the authority granted to a state agency to make or administer standards for specialized buildings, as provided in:

(a) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(b) Title 26, Chapter 39, Utah Child Care Licensing Act;

(c) Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) Title 64, Chapter 13, Department of Corrections – State Prison; or

(e) another statute that grants a state agency authority to make or administer other special standards.

(2) If a special standard conflicts with a code, the special standard prevails.

(3) This chapter does not apply to the administration of the statutes described in Subsection (1).

Section 17. Section 15A-1-209 is enacted to read:

15A-1-209. Building permit requirements.

(1) As used in this section, "project" means a "construction project" as defined in Section 38-1-27.

(2) (a) The division shall develop a standardized building permit numbering system for use by any compliance agency in the state that issues a permit for construction.

(b) The standardized building permit numbering system described under Subsection (2)(a) shall include a combination of alpha or numeric characters arranged in a format acceptable to the compliance agency.

(c) A compliance agency issuing a permit for construction shall use the standardized building permit numbering system described under Subsection (2)(a).

(d) A compliance agency may not use a numbering system other than the system described under Subsection (2)(a) to define a building permit number.

(3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt a standardized building permit form by rule.

(b) The standardized building permit form created under this Subsection (3) shall include fields for indicating the following information:

(i) the name and address of the owner of or contractor for the project;

(ii) (A) the address of the project; or

(B) a general description of the project; and

(iii) whether the permit applicant is an original contractor or owner-builder.

(c) The standardized building permit form created under this Subsection (3) may include any other information the division considers useful.

(d) A compliance agency shall issue a permit for construction only on a standardized building permit form approved by the division.

(e) A permit for construction issued by a compliance agency under Subsection (3)(d) shall print the standardized building permit number assigned under Subsection (2) in the upper right-hand corner of the building permit form in at least 12-point font.

(f) (i) Except as provided in Subsection (3)(f)(ii), a compliance agency may not issue a permit for construction if the information required by Subsection (3)(b) is not completed on the building permit form.

(ii) If a compliance agency does not issue a separate permit for different aspects of the same project, the compliance agency may issue a permit for construction without the information required by Subsection (3)(b)(iii).

(g) A compliance agency may require additional information for the issuance of a permit for construction.

(4) A local regulator issuing a single-family residential building permit application shall include in the application or attach to the building permit the following notice prominently placed in at least 14-point font: "Decisions relative to this application are subject to review by the chief executive officer of the municipal or county entity issuing the single-family residential building permit and appeal under the International Residential Code as adopted by the Legislature."

(5) (a) A compliance agency shall:

(i) charge a 1% surcharge on a building permit it issues; and

(ii) transmit 80% of the amount collected to the division to be used by the division in accordance with Subsection (5)(c).

(b) The portion of the surcharge transmitted to the division shall be deposited as a dedicated credit.

(c) The division shall use the money received under this Subsection (5) to provide education:

(i) regarding the codes and code amendments that under Section 15A-1-204 are adopted, approved, or being considered for adoption or approval; and

(ii) to:

(A) building inspectors; and

(B) individuals engaged in construction-related trades or professions.

Section 18. Section 15A-1-210 is enacted to read:

15A-1-210. Review of building inspection.

(1) As used in this section, "International Residential Code" means the International

Residential Code as adopted under the State Construction Code.

(2) Subject to Subsection (3), a city or county shall, by ordinance, provide for review of an inspection conducted by the city's or county's building inspector for a single-family residential building permit.

(3) Upon request by a person seeking a single-family residential building permit, a chief executive officer of the municipality or county issuing the single-family residential building permit, or the chief executive officer's designee, shall, with reasonable diligence, review an inspection described in Subsection (2) to determine whether the inspection constitutes a fair administration of the State Construction Code.

(4) A review described in this section:

(a) is separate and unrelated to an appeal under the International Residential Code;

(b) may not be used to review a matter that may be brought by appeal under the International Residential Code;

(c) may not result in the waiver or modification of an International Residential Code requirement or standard;

(d) may not conflict with an appeal, or the result of an appeal, under the International Residential Code; and

(e) does not prohibit a person from bringing an appeal under the International Residential Code.

(5) A person who seeks a review described in this section may not be prohibited by preclusion, estoppel, or otherwise from raising an issue or bringing a claim in an appeal under the International Residential Code on the grounds that the person raised the issue or brought the claim in the review described in this section.

Section 19. Section 15A-1-301 is enacted to read:

Part 3. Factory Built Housing and Modular Units Administration Act

15A-1-301. Title.

This part is known as "Factory Built Housing and Modular Units Administration Act."

Section 20. Section 15A-1-302 is enacted to read:

15A-1-302. Definitions.

As used in this part:

(1) "Compliance agency" is as defined in Section 15A-1-202.

(2) "Factory built housing" means a manufactured home or mobile home.

(3) "Factory built housing set-up contractor" means an individual licensed by the division to set up or install factory built housing on a temporary or permanent basis.

(4) "HUD Code" means the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. Sec. 5401 et seq.

(5) "Local regulator" is as defined in Section 15A-1-202.

(6) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the HUD Code, in one or more sections, that:

(a) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet; and

(b) is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(7) "Mobile home" means a transportable factory built housing unit built before June 15, 1976, in accordance with a state mobile home code which existed prior to the HUD Code.

(8) "Modular unit" means a structure:

(a) built from sections that are manufactured in accordance with the State Construction Code and transported to a building site; and

(b) the purpose of which is for human habitation, occupancy, or use.

(9) "State regulator" is as defined in Section 15a-1-202.

Section 21. Section 15A-1-303 is enacted to read:

15A-1-303. Factory built housing units.

(1) (a) A manufactured home constructed, sold, or setup in the state shall be constructed in accordance with the HUD Code.

(b) A manufactured home setup in the state shall be installed in accordance with the provisions of the State Construction Code applicable to manufactured housing installation.

(c) A local regulator subdivision has the authority and responsibility to issue a building permit for the modification or setup of a manufactured home within that political subdivision.

(d) A local regulator shall conduct the inspection of a modification to or the setup of a manufactured home and give an approval within the political subdivision in which the modification or setup takes place.

(e) A manufactured home constructed on or after June 15, 1976, shall be identifiable by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.

(2) (a) A mobile home sold or setup in the state shall be constructed in accordance with the portions of the State Construction Code applicable to a

mobile home at the time the mobile home was constructed.

(b) A mobile home setup in the state shall be installed in accordance with the portions of the State Construction Code applicable to manufactured housing installation.

(c) A local regulator has the authority and responsibility to issue a building permit for the setup of a mobile home within that political subdivision.

(d) A local regulator shall conduct the inspection of a modification to or the setup of a mobile home and give the approvals given by the local regulator within the political subdivision in which the modification or setup takes place.

Section 22. Section 15A-1-304 is enacted to read:

15A-1-304. Modular units.

Modular unit construction, setup, issuance of permits for construction or setup, and setup shall be in accordance with the following:

(1) Construction and setup of a modular unit shall be in accordance with the State Construction Code.

(2) A local regulator has the responsibility and authority for plan review and issuance of permits for construction, modification, or setup for the political subdivision in which the modular unit is to be setup;

(3) An inspection of the construction, modification of, or setup of a modular unit shall conform with this chapter.

(4) A local regulator has the responsibility to issue an approval for the political subdivision in which a modular unit is to be setup or is setup.

(5) Nothing in this section precludes:

(a) a local regulator from contracting with a qualified third party for the inspection or plan review provided in this section; or

(b) the state from entering into an interstate compact for third party inspection of the construction of a modular unit.

Section 23. Section 15A-1-305 is enacted to read:

15A-1-305. Modification of factory built housing units and modular units.

(1) A modification to a factory built housing unit shall be made in accordance with the following:

(a) Modification to a manufactured home or mobile home before installation or setup of the unit for habitation shall be made in accordance with the HUD Code.

(b) (i) Modification to a manufactured home or mobile home after installation or setup of the unit for habitation shall be made in accordance with the HUD Code if the modification does not include the addition of any space to the existing unit or the attachment of any structure to the existing unit.

(ii) If a modification to a manufactured home or mobile home afer installation or setup for the unit for habitation includes the addition of any space to the existing unit or the attachment of any structure to the unit, the modification shall be made as follows:

(A) modifications to the existing unit shall be in accordance with the HUD Code; and

(B) additional structure outside of the existing unit shall be in accordance with this chapter.

(2) A modification to a modular housing unit shall be made in accordance with this chapter.

Section 24. Section 15A-1-306 is enacted to read:

15A-1-306. Factory built housing and modular units -- Division responsibility -- Unlawful conduct.

(1) The division:

(a) shall maintain current information on the HUD Code and the portions of the State Construction Code relevant to manufactured housing installation and will provide at reasonable cost the information to compliance agencies, local regulators, or state regulators requesting such information;

(b) shall provide qualified personnel to advise compliance agencies, local regulators, and state regulators regarding the standards for construction and setup, construction and setup inspection, and additions or modifications to factory built housing;

(c) is designated as the state administrative agency for purposes of the HUD Code;

(d) may inspect the work of modular unit manufacturers in the state during the construction process to determine compliance of the manufacturer with this chapter for those units to be installed within the state and upon a finding of substantive deficiency, issue a corrective order to the manufacturer with a copy to the local regulator in the state's political subdivision in which the unit is to be installed;

(e) shall have rights of entry and inspection as specified under the HUD Code; and

(f) shall implement by rule as required by the HUD Code:

(i) a dispute resolution program; and

(ii) a continuing education requirement for manufactured housing installation contractors.

(2) The division may assess civil penalties payable to the state for violation of the HUD Code in an amount identical to those set forth in Section 611 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Sec. 5410.

(3) The state may impose criminal sanctions for violations of the HUD Code identical to those set forth in Section 611 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Sec. 5410, provided that if the

criminal sanction is a fine, the fine shall be payable to the state.

Section 25. Section 15A-1-401 is enacted to read:

Part 4. State Fire Code Administration Act

15A-1-401. Title.

This part is known as the "State Fire Code Administration Act."

Section 26. Section 15A-1-402 is enacted to read:

15A-1-402. Definitions.

As used in this part:

(1) "Division"means the State Fire Marshal Division created in Section 53-7-103.

(2) "Legislative action" includes legislation that:

(a) adopts a State Fire Code;

(b) amends a State Fire Code; or

(c) repeals one or more provisions of a State Fire Code.

Section 27. Section 15A-1-403 is enacted to read:

15A-1-403. Adoption of State Fire Code.

(1) (a) The State Fire Code is:

(i) a code promulgated by a nationally recognized code authority that is adopted by the Legislature under this section with any modifications; and

(ii) a code to which cities, counties, fire protection districts, and the state shall adhere in safeguarding life and property from the hazards of fire and explosion.

(b) On and after July 1, 2010, the State Fire Code is the State Fire Code in effect on July 1, 2010, until in accordance with this section:

(i) a new State Fire Code is adopted; or

(ii) one or more provisions of the State Fire Code are amended or repealed in accordance with this section.

(c) A provision of the State Fire Code may be applicable:

(i) to the entire state; or

(ii) within a city, county, or fire protection district.

(2) (a) The Legislature shall adopt a State Fire Code by enacting legislation that adopts a nationally recognized fire code with any modifications.

(b) Legislation enacted under this Subsection (2) shall state that it takes effect on the July 1 after the day on which the legislation is enacted, unless otherwise stated in the legislation.

(c) Subject to Subsection (5), a State Fire Code adopted by the Legislature is the State Fire Code until in accordance with this section the Legislature adopts a new State Fire Code by:

(i) adopting a new State Fire Code in its entirety; or

(ii) amending or repealing one or more provisions of the State Fire Code.

(3) (a) The board shall, by no later than November 30 of each year, recommend to the Business and Labor Interim Committee whether the Legislature should:

(i) amend or repeal one or more provisions of the State Fire Code; or

(ii) in a year of a regularly scheduled update of a nationally recognized fire code, adopt with any modifications the nationally recognized fire code.

(b) The board may recommend legislative action related to the State Fire Code:

(i) on its own initiative; or

(ii) upon the receipt of a request by a city, county, or fire protection district that the board recommend legislative action related to the State Fire Code.

(c) Within 45 days after receipt of a request under Subsection (3)(b), the board shall direct the division to convene an informal hearing concerning the request.

(d) The board shall conduct a hearing under this section in accordance with the rules of the board.

(e) The board shall decide whether to include in the report required under Subsection (3)(a) whether to recommend the legislative action raised by a request.

(f) Within 15 days following the completion of a hearing of the board under this Subsection (3), the board shall direct the division to notify the entity that made the request of the board's decision regarding the request. The division shall provide the notice:

(i) in writing; and

(ii) in a form prescribed by the board.

(4) If the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, the Business and Labor Interim Committee shall prepare legislation for consideration by the Legislature in the next general session that, if passed by the Legislature, would:

(a) adopt a new State Fire Code in its entirety; or

(b) amend or repeal one or more provisions of the State Fire Code.

(5) (a) Notwithstanding Subsection (3), the board may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, amend a State Fire Code if the board determines that waiting for legislative action in the next general legislative session would:

(i) cause an imminent peril to the public health, safety, or welfare; or

(ii) place a person in violation of federal or other state law.

(b) If the board amends a State Fire Code in accordance with this Subsection (5), the board shall:

(i) publish the State Fire Code with the amendment; and

(ii) notify the Business and Labor Interim Committee of the adoption, including a copy of an analysis by the board identifying specific reasons and justifications for its findings.

(c) If not formally adopted by the Legislature at its next annual general session, an amendment to a State Fire Code adopted under this Subsection (5) is repealed on the July 1 immediately following the next annual general session that follows the adoption of the amendment.

(6) (a) A legislative body of a political subdivision may enact an ordinance that is more restrictive in its fire code requirements than the State Fire Code:

(i) in order to meet a public safety need of the political subdivision; and

(ii) subject to the requirements of this Subsection (6).

(b) A legislative body of a political subdivision that enacts an ordinance under this section on or after July 1, 2010 shall:

(i) notify the board in writing at least 30 days before the day on which the legislative body enacts the ordinance and include in the notice a statement as to the proposed subject matter of the ordinance; and

(ii) after the legislative body enacts the ordinance, report to the board before the board makes the report required under Subsection (6)(c), including providing the board:

(A) a copy of the ordinance enacted under this Subsection (6); and

(B) a description of the public safety need that is the basis of enacting the ordinance.

(c) The board shall submit to the Business and Labor Interim Committee each year with the recommendations submitted in accordance with Subsection (3):

(i) a list of the ordinances enacted under this Subsection (6) during the fiscal year immediately proceeding the report; and

(ii) recommendations, if any, for legislative action related to an ordinance enacted under this Subsection (6).

(d) (i) The state fire marshal shall keep an indexed copy of an ordinance enacted under this Subsection (6).

(ii) The state fire marshal shall make a copy of an ordinance enacted under this Subsection (6) available on request.

(e) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for a legislative body of a political subdivision to follow to provide the notice and report required under this Subsection (6).

Section 28. Section 15A-2-101 is enacted to read:

CHAPTER 2. ADOPTION OF STATE CONSTRUCTION CODE

Part 1. General Provisions

15A-2-101. Title -- Adoption of code.

(1) This chapter is known as the "Adoption of State Construction Code."

(2) In accordance with Chapter 1, Part 2, State Construction Code Administration Act, the Legislature repeals the State Construction Code in effect on July 1, 2010, and adopts the following as the State Construction Code:

(a) this chapter;

(b) Chapter 3, Statewide Amendments Incorporated as Part of State Construction Code; and

(c) Chapter 4, Local Amendments Incorporated as Part of State Construction Code.

Section 29. Section 15A-2-102 is enacted to read:

15A-2-102. Definitions.

As used in this chapter and Chapters 3 and 4:

(1) "HUD Code" means the Federal Manufactured Housing Construction and Safety Standards Act, as issued by the Department of Housing and Urban Development and published in 24 C.F.R. Parts 3280 and 3282 (as revised April 1, 1990).

(2) "IBC" means the edition of the International Building Code adopted under Section 15A-2-103.

(3) "IECC" means the edition of the International Energy Conservation Code adopted under Section 15A-2-103.

(4) "IFGC" means the edition of the International Fuel Gas Code adopted under Section 15A-2-103.

(5) "IMC" means the edition of the International Mechanical Code adopted under Section 15A-2-103.

(6) "IPC" means the edition of the International Plumbing Code adopted under Section 15A-2-103.

(7) "IRC" means the edition of the International Residential Code adopted under Section 15A-2-103.

(8) "NEC" means the edition of the National Electrical Code adopted under Section 15A-2-103.

(9) "UWUI" means the edition of the Utah Wildland Urban Interface Code adopted under Section 15A-2-103.

Section 30. Section 15A-2-103 is enacted to read:

15A-2-103. Specific editions adopted of construction code of a nationally recognized code authority.

(1) Subject to the other provisions of this part, the following construction codes are incorporated by

reference, and together with the amendments specified in Chapters 3 and 4, are the construction standards to be applied to building construction, alteration, remodeling, and repair, and in the regulation of building construction, alteration, remodeling, and repair in the state:

(a) the 2009 edition of the International Building Code, including Appendix J, issued by the International Code Council;

(b) the 2009 edition of the International Residential Code, issued by the International Code Council;

(c) the 2009 edition of the International Plumbing Code, issued by the International Code Council;

(d) the 2009 edition of the International Mechanical Code, issued by the International Code Council;

(e) the 2009 edition of the International Fuel Gas Code, issued by the International Code Council;

(f) the 2008 edition of the National Electrical Code, issued by the National Fire Protection Association;

(g) the 2009 edition of the International Energy Conservation Code, issued by the International Code Council;

(h) subject to Subsection 15A-2-104(2), the HUD Code;

(i) subject to Subsection 15A-2-104(1), Appendix E of the 2009 edition of the International Residential Code, issued by the International Code Council; and

(j) subject to Subsection 15A-2-104(1), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard, issued by the National Fire Protection Association.

(2) Consistent with Title 65A, Chapter 8, Management of Forest Lands and Fire Control, the Legislature adopts the 2006 edition of the Utah Wildland Urban Interface Code, issued by the International Code Council, with the alternatives or amendments approved by the Utah Division of Forestry, as a construction code that may be adopted by a local compliance agency by local ordinance or other similar action as a local amendment to the codes listed in this section.

Section 31. Section 15A-2-104 is enacted to read:

15A-2-104. Installation standards for manufactured housing.

(1) The following are the installation standards for manufactured housing for new installations or for existing manufactured or mobile homes that are subject to relocation, building alteration, remodeling, or rehabilitation in the state:

(a) The manufacturer's installation instruction for the model being installed is the primary standard.

(b) If the manufacturer's installation instruction for the model being installed is not available or is incomplete, the following standards apply:

(i) Appendix E of the 2009 edition of the IRC, as issued by the International Code Council for installations defined in Section AE101 of Appendix E; or

(ii) if an installation is beyond the scope of the 2009 edition of the IRC as defined in Section AE101 of Appendix E, the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard, issued by the National Fire Protection Association.

(c) A manufacturer, dealer, or homeowner is permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction, Appendix E of the 2009 edition of the IRC, or the 2005 edition of the NFPA 225, if the design is approved in writing by a professional engineer or architect licensed in Utah.

(d) For a mobile home built before June 15, 1976, the mobile home shall also comply with the additional installation and safety requirements specified in Chapter 3, Part 8, Installation and Safety Requirements for Mobile Homes Built Before June 15, 1976.

(2) Pursuant to the HUD Code Section 604(d), a manufactured home may be installed in the state that does not meet the local snow load requirements as specified in Chapter 3, Part 2, Statewide Amendments to IRC, except that the manufactured home shall have a protective structure built over the home that meets the IRC and the snow load requirements under Chapter 3, Part 2, Statewide Amendments to IRC.

Section 32. Section 15A-2-105 is enacted to read:

15A-2-105. Scope of application.

(1) To the extent that a construction code adopted under Section 15A-2-103 establishes a local administrative function or establishes a method of appeal which pursuant to Section 15A-1-207 is designated to be established by the compliance agency:

(a) that provision of the construction code is not included in the State Construction Code; and

(b) a compliance agency may establish provisions to establish a local administrative function or a method of appeal.

(2) (a) To the extent that a construction code adopted under Subsection (1) establishes a provision, standard, or reference to another code that by state statute is designated to be established or administered by another state agency, or a local city, town, or county jurisdiction:

(i) that provision of the construction code is not included in the State Construction Code; and

(ii) the state agency or local government has authority over that provision of the construction code.

(b) Provisions excluded under this Subsection (2) include:

(i) the International Property Maintenance Code;

(ii) the International Private Sewage Disposal Code, authority over which is reserved to the Department of Health and the Department of Environmental Quality;

(iii) the International Fire Code, authority over which is reserved to the board, pursuant to Section 15A-1-403;

(iv) a day care provision that is in conflict with Title 26, Chapter 39, Utah Child Care Licensing Act, authority over which is designated to the Utah Department of Health; and

(v) a wildland urban interface provision that goes beyond the authority under Section 15A-1-204, for the State Construction Code, authority over which is designated to the Utah Division of Forestry or to a local compliance agency.

(3) If a construction code adopted under Subsection 15A-2-103(1) establishes a provision that exceeds the scope described in Chapter 1, Part 2, State Construction Code Administration Act, to the extent the scope is exceeded, the provision is not included in the State Construction Code.

Section 33. Section 15A-3-101 is enacted to read:

CHAPTER 3. STATEWIDE AMENDMENTS INCORPORATED AS PART OF STATE CONSTRUCTION CODE

Part 1. Statewide Amendments to IBC

15A-3-101. General provision.

The amendments in this part are adopted as amendments to the IBC to be applicable statewide.

Section 34. Section 15A-3-102 is enacted to read:

15A-3-102. Amendments to Chapters 1 through 3 of IBC.

(1) IBC, Section 106, is deleted.

(2) (a) In IBC, Section 110, a new section is added as follows: "110.3.5, Weather-resistant exterior wall envelope. An inspection shall be made of the weather-resistant exterior wall envelope as required by Section 1403.2, and flashing as required by Section 1405.4 to prevent water from entering the weather-resistive barrier."

(b) The remaining sections of IBC, Section 110, are renumbered as follows: 110.3.6, Lath or gypsum board inspection; 110.3.7, Fire- and smoke-resistant penetrations; 110.3.8 Energy efficiency inspections; 110.3.9, Other inspections; 110.3.10, Special inspections; and 110.3.11, Final inspection.

(3) IBC, Section 115.1, is deleted and replaced with the following: "115.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or other pertinent laws or ordinances or is dangerous or unsafe, the building official is authorized to stop work."

(4) In IBC, Section 202, the definition for "Assisted Living Facility" is deleted and replaced with the following: "ASSISTED LIVING FACILITY. See Section 308.1.1."

(5) In IBC, Section 202, the definition for "Child Care Facilities" is deleted and replaced with the following: "CHILD CARE FACILITIES. See Section 308.3.1."

(6) In the list in IBC, Section 304.1, "Ambulatory health care facilities" is deleted and replaced with "Ambulatory health care facilities with four or fewer surgical operating rooms."

(7) IBC, Section 305.2, is deleted and replaced with the following: "305.2 Day care. The use of a building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 424 for special requirements for Group E child day care centers.Exception: Areas used for child day care purposes with a Residential Certificate or a Family License, as defined in Utah Administrative Code, R430-90, Licensed Family Child Care, may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2. Areas used for Hourly Child Care Centers, as defined in Utah Administrative Code, R430-60, or Out of School Time Programs, as defined in Utah Administrative Code, R430-70, may be classified as accessory occupancies."

(8) In IBC, Section 308, the following definitions are added: "308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE I ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE II ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

RESIDENTIAL TREATMENT/SUPPORT ASSISTED LIVING FACILITY. A residential treatment/support assisted living facility which creates a group living environment for four or more

residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person."

(9) In IBC, Section 308.2, the words "Assisted living facilities" are deleted and replaced with "Type I Assisted living facilities."

(10) IBC, Section 308.3, is deleted and replaced with the following: "308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing, or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, ambulatory surgical centers with five or more operating rooms where care is less than 24 hours, and type II assisted living facilities. Type II assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type II assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility."

(11) In IBC, Section 308.3.1, the definition for "CHILD CARE FACILITIES" is deleted and replaced with the following: "CHILD CARE FACILITIES. A child care facility, as licensed by the Utah Department of Human Services in Utah Administrative Code, R501, that provides care on a 24-hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2."

(12) IBC, Section 308.5, is deleted and replaced with the following: "308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3 or shall comply with the International Residential Code in accordance with Section 101.2. Places of worship during religious functions and Group E child day care centers are not included."

(13) IBC, Section 308.5.2, is deleted.

(14) In IBC, Section 310.1, in the subsection designated as R-1, at the end of the sentence beginning with "Congregate living facilities" the following is added: "or shall comply with the International Residential Code."

(15) In IBC, Section 310.1, in the subsection designated as R-2, at the end of the sentence beginning with "Congregate living facilities" the following is added: "or shall comply with the International Residential Code."

(16) In IBC, Section 310.1, the following is added at the end of the subsection designated as R-3: "Areas used for day care purposes may be located in a residential dwelling unit under all of the following conditions:

1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.

2. Use is approved by the Utah Department of Health, as enacted under the authority of the Utah Code, Title 26, Chapter 39, Utah Child Care Licensing Act, and in any of the following categories:

a. Utah Administrative Code, R430-50, Residential Certificate Child Care.

b. Utah Administrative Code, R430-90, Licensed Family Child Care.

3. Compliance with all zoning regulations of the local regulator."

(17) In IBC, Section 310.1, the subsection designated as R-4 is deleted and replaced with the following: "R-4: Residential occupancies shall include buildings arranged for occupancy as Type I Assisted Living Facilities or Residential Treatment/Support Assisted Living Facilities including more than five but not more than 16 residents, excluding staff.Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code."

(18) In IBC, Section 310.2, the definition for "Residential Care/Assisted Living Facilities" is deleted and replaced with the following: "Assisted Living Facilities, see Section 308.1.1".

Section 35. Section 15A-3-103 is enacted to read:

15A-3-103. Amendments to Chapters 4 through 6 of IBC.

(1) Section IBC, 403.5.5, is deleted.

(2) In IBC, Section 422.1, the words "Sections 422.1 to 422.6" are replaced with "Sections 422.1 to 422.7".

(3) In IBC, Section 422, a new section is added as follows: "422.7 Separation. Occupancies classified as Group B Ambulatory Health Care Facilities shall be separated from all surrounding tenants and occupancies in accordance with Table 508.4 but not less than one-hour fire barrier when the suite is capable of providing care for four or more care recipients who are incapable of self preservation."

(4) A new IBC, Section 424, is added as follows: "Section 424 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 424.424.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.

Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.

424.2 Egress. All Group E child day care spaces with an occupant load of more than 10 shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1029.

424.3 All Group E Child Day Care Centers shall comply with Utah Administrative Code, R430-100, Child Care Centers."

(5) In IBC, Section 504.2, a new section is added as follows: "504.2.1 Notwithstanding the exceptions to Section 504.2, Group I-2 Assisted Living Facilities shall be allowed to be two stories of Type V-A construction when all of the following apply:

1. All secured units are located at the level of exit discharge in compliance with Section 1008.1.9.3 as amended;

2. The total combined area of both stories shall not exceed the total allowable area for a one-story building; and

3. All other provisions that apply in Section 407 have been provided."

(6) In IBC, Table 508.4, a new footnote g is added as follows: "g. See Section 422.7 for additional requirements of Group B Ambulatory Health Care Facilities."

Section 36. Section 15A-3-104 is enacted to read:

15A-3-104. Amendments to Chapters 7 through 9 of IBC.

(1) In IBC, Section 707.5.1, a new exception 4 is added as follows: "4. Group B Ambulatory Health Care Facilities."

(2) In IBC, Section (F)902, the definition for record drawings is deleted and replaced with the following: "(F) RECORD DRAWINGS. Drawings ("as builts") that document all aspects of a fire protection system as installed."

(3) In IBC, Section (F)903.2.2, the words "all fire areas" are deleted and replaced with "buildings".

(4) IBC, Section (F)903.2.4, condition 2, is deleted and replaced with the following: "2. A Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access."

(5) IBC, Section (F)903.2.7, condition 2, is deleted and replaced with the following: "2. A Group M fire area is located more than three stories above the lowest level of fire department vehicle access."

(6) IBC, Section (F)903.2.8, is deleted and replaced with the following: "(F)903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exceptions:

1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code For One- and Two-Family Dwellings.

2. Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system."

(7) IBC, Section (F)903.2.9, condition 2, is deleted and replaced with the following: "2. A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access."

(8) IBC, Section (F)903.2.10, is deleted and replaced with the following: "(F)903.2.10 Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

Exception 1: Parking garages of less than 5,000 square feet (464 m^2) accessory to Group R-3 occupancies.

Exception 2: Open parking garages not located beneath other groups if one of the following conditions is met:

a. Access is provided for fire fighting operations to within 150 feet (45,720 mm) of all portions of the parking garage as measured from the approved fire department vehicle access; or

b. Class I standpipes are installed throughout the parking garage."

(9) In IBC, Section (F)903.2.10.1, the last clause "where the fire area exceeds 5,000 square feet (464 m^2)" is deleted.

(10) IBC, Section (F)904.11, is deleted and replaced with the following: "(F)904.11 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions.

Exception: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled, and installed in accordance with Section 304.1 of the International Mechanical Code."

(11) IBC, Subsections (F)904.11.3, (F)904.11.3.1, (F)904.11.4, and (F)904.11.4.1, are deleted.

(12) A new IBC, Section (F)907.9, is added as follows: "Section (F)907.9 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances and in dwelling units that have attached garages. If more than one carbon monoxide alarm is required, they shall be

interconnected as required in the International Fire Code, Chapter 9, Section 907.2.11.3. In new construction, carbon monoxide alarms shall receive their primary power as required in the International Fire Code, Chapter 9, Section 907.2.11.4. Listed single- and multiple-station carbon monoxide alarms shall comply with UL 2034 and shall be installed in accordance with the provisions of this code and NFPA 720."

Section 37. Section 15A-3-105 is enacted to read:

15A-3-105. Amendments to Chapters 10 through 12 of IBC.

(1) In IBC, Section 1008.1.9.6:

(a) the words "Group I-1 and" are added in the title and in the first sentence before the words "Group I-2";

(b) the word "delayed" is deleted throughout and replaced with "controlled"; and

(c) the last sentence before the numbered subsections 1 through 6 is deleted.

(2) In IBC, Section 1009.4.2, exception 5 is deleted and replaced with the following: "5. In Group R-3 occupancies, within dwelling units in Group R-2 occupancies, and in Group U occupancies that are accessory to a Group R-3 occupancy, or accessory to individual dwelling units in Group R-2 occupancies, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm)."

(3) In IBC, Section 1009.12, a new exception 6 is added as follows: "6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers."

(4) In IBC, Section 1013.2, the words "adjacent fixed seating" are deleted.

(5) In IBC, Section 1013.2, a new exception 5 is added as follows: "5. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914 mm) in height."

(6) In IBC, Section 1015.2.2, the following sentence is added at the end: "Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available."

(7) IBC, Section 1024, is deleted.

(8) A new IBC, Section 1109.7.1, is added as follows: "1109.7.1 Platform (wheelchair) lifts. All platform (wheelchair) lifts shall be capable of independent operation without a key."

(9) In IBC, Section 1208.4, subparagraph 1 is deleted and replaced with the following:

"1. The unit shall have a living room of not less than 165 square feet (15.3 m^2) of floor area. An additional 100 square feet (9.3 m^2) of floor area shall be provided for each occupant of such unit in excess of two."

Section 38. Section 15A-3-106 is enacted to read:

15A-3-106. Amendments to Chapters 13 through 15 of IBC.

IBC, Chapters 13 through 15 are not amended.

Section 39. Section 15A-3-107 is enacted to read:

15A-3-107. Amendments to Chapter 16 of IBC.

(1) In IBC, Table 1604.5, Occupancy Category III, in the sentence that begins Group I-2, a new footnote b is added as follows: "b. Type II Assisted Living Facilities that are I-2 occupancy classifications in accordance with Section 308 shall be Occupancy Category II in this table."

(2) In IBC, Section 1605.2.1, the formula shown as "f_2 = 0.2 for other roof configurations" is deleted and replaced with the following: "f_2 = 0.20 + .025(A-5) for other configurations where roof snow load exceeds 30 psf;

f_2 = 0 for roof snow loads of 30 psf (1.44kN/m^2) or less.

Where A = Elevation above sea level at the location of the structure (ft./1,000)."

(3) In IBC, Section 1605.3.1 and Section 1605.3.2, exception 2 in each section is deleted and replaced with the following: "2. Flat roof snow loads of 30 pounds per square foot (1.44 kNm^2) or less need not be combined with seismic loads. Where flat roof snow loads exceed 30 pounds per square foot (1.44 kNm^2), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads. W_s as calculated below, shall be combined with seismic loads.

$W_s = (0.20 + 0.025(A-5))P_f$ is greater than or equal to 0.20 P_f.

Where:

W_s = Weight of snow to be included in seismic calculations

A = Elevation above sea level at the location of the structure (ft./1,000)

P_f = Design roof snow load, psf.

For the purpose of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating P_f may be considered 1.0 for use in the formula for W_s".

(4) IBC, Section 1608.1, is deleted and replaced with the following: "1608.1 General. Except as modified in Sections 1608.1.1, 1608.1.2, and 1608.1.3, design snow loads shall be determined in accordance with Chapter 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607."

(5) A new IBC, Section 1608.1.1, is added as follows: "1608.1.1 Section 7.4.5 of Chapter 7 of ASCE 7 referenced in Section 1608.1 of the IBC is deleted and replaced with the following: "Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of $2p_f$ on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice."

(6) In IBC, Section 1608.1.2, a new section is added as follows: "1608.1.2 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$ for A greater than A_o, and $P_g = P_o$ for A less than or equal to A_o.

WHERE:

P_g = Ground snow load at a given elevation (psf);

P_o = Base ground snow load (psf) from Table No. 1608.1.2(a);

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.2(a);

A = Elevation above sea level at the site (ft./1,000);

A_o = Base ground snow elevation from Table 1608.1.2(a) (ft./1,000).

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.2(b), provided the site is no more than 100 ft. higher than the listed elevation.Where the minimum roof live load in accordance with Section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf."

(7) IBC, Table 1608.1.2(a) and Table 1608.1.2(b), are added as follows:

"TABLE NO. 1608.1.2(a)
STATE OF UTAH - REGIONAL
SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. 1608.1.2(b)
RECOMMENDED SNOW LOADS FOR
SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5,920 ft.	43	62
Box Elder County			
Brigham City	4,300 ft.	30	43
Tremonton	4,290 ft.	30	43
Cache County			
Logan	4,530 ft.	35	50
Smithfield	4,595 ft.	35	50
Carbon County			
Price	5,550 ft.	30	43
Daggett County			
Manila	5,377 ft.	30	43
Davis County			
Bountiful	4,300 ft.	30	43
Farmington	4,270 ft.	30	43
Layton	4,400 ft.	30	43
Fruit Heights	4,500 ft.	40	57
Duchesne County			
Duchesne	5,510 ft.	30	43
Roosevelt	5,104 ft.	30	43
Emery County			
Castledale	5,660 ft.	30	43
Green River	4,070 ft.	25	36
Garfield County			
Panguitch	6,600 ft.	30	43
Grand County			
Moab	3,965 ft.	25	36
Iron County			
Cedar City	5,831 ft.	30	43
Juab County			
Nephi	5,130 ft.	30	43
Kane County			
Kanab	5,000 ft.	25	36
Millard County			
Millard	5,000 ft.	30	43
Delta	4,623 ft.	30	43
Morgan County			
Morgan	5,064 ft.	40	57
Piute County			
Piute	5,996 ft.	30	43
Rich County			
Woodruff	6,315 ft.	40	57

Salt Lake County			
Murray	4,325 ft.	30	43
Salt Lake City	4,300 ft.	30	43
Sandy	4,500 ft.	30	43
West Jordan	4,375 ft.	30	43
West Valley	4,250 ft.	30	43
San Juan County			
Blanding	6,200 ft.	30	43
Monticello	6,820 ft.	35	50
Sanpete County			
Fairview	6,750 ft.	35	50
Mt. Pleasant	5,900 ft.	30	43
Manti	5,740 ft.	30	43
Ephraim	5,540 ft.	30	43
Gunnison	5,145 ft.	30	43
Sevier County			
Salina	5,130 ft.	30	43
Richfield	5,270 ft.	30	43
Summit County			
Coalville	5,600 ft.	60	86
Kamas	6,500 ft.	70	100
Park City	6,800 ft.	100	142
Park City	8,400 ft.	162	231
Summit Park	7,200 ft.	90	128
Tooele County			
Tooele	5,100 ft.	30	43
Uintah County			
Vernal	5,280 ft.	30	43
Utah County			
American Fork	4,500 ft.	30	43
Orem	4,650 ft.	30	43
Pleasant Grove	5,000 ft.	30	43
Provo	5,000 ft.	30	43
Spanish Fork	4,720 ft.	30	43
Wasatch County			
Heber	5,630 ft.	60	86
Washington County			
Central	5,209 ft.	25	36
Dameron	4,550 ft.	25	36
Leeds	3,460 ft.	20	29
Rockville	3,700 ft.	25	36
Santa Clara	2,850 ft.	15 (1)	21
St. George	2,750 ft.	15 (1)	21
Wayne County			
Loa	7,080 ft.	30	43
Hanksville	4,308 ft.	25	36
Weber County			
North Ogden	4,500 ft.	40	57
Ogden	4,350 ft.	30	43

NOTES

(1) The IBC requires a minimum live load - See 1607.11.2.

(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation."

(8) A new IBC, Section 1608.1.3, is added as follows: "1608.1.3 Thermal Factor. The value for the thermal factor, C_t, used in calculation of P_f shall be determined from Table 7.3 in ASCE 7.

Exception: Except for unheated structures, the value of C_t need not exceed 1.0 when ground snow load, P_g is calculated using Section 1608.1.2 as amended."

(9) IBC, Section 1608.2, is deleted and replaced with the following: "1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official."

(10) In IBC, Section 1609.1.1, a new exception 7 is added as follows: "7. The wind design procedure as found in Sections 1616 through 1624 of the 1997 Uniform Building Code may be used as an alternative wind design procedure for signs and free standing walls as listed in item 7 listed in Table 16-H of the 1997 Uniform Building Code. The Importance Factor, I, shall be determined in accordance with Table 6-1 of ASCE 7. Stress increases are only allowed as provided in Section 1605.3 of the 2009 IBC."

(11) A new IBC, Section 1613.1.1, is added as follows: "1613.1.1 ASCE 12.7.2 and 12.14.8.1 of Chapter 12 of ASCE 7 referenced in Section 1613.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Where the flat roof snow load, P_f, exceeds 30 psf, the snow load included in seismic design shall be calculated, in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$ is greater than or equal to 0.20 P_f.

WHERE:

W_s = Weight of snow to be included in seismic calculations

A = Elevation above sea level at the location of the structure (ft./1,000)

P_f = Design roof snow load, psf.

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating P_f may be considered 1.0 for use in the formula for W_s."

(12) A new IBC, Section 1613.8, is added as follows: "1613.8 ASCE 7, Section 13.5.6.2.2 paragraph (e) is modified to read as follows: (e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.

2. At fire sprinkler heads in frangible surfaces per NFPA 13."

Section 40. Section 15A-3-108 is enacted to read:

15A-3-108. Amendments to Chapters 17 through 19 of IBC.

(1) A new IBC, Section 1807.1.6.4, is added as follows: "1807.1.6.4 Empirical concrete foundation

design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1807.1.6.4."

(2) A new IBC, Table 1807.1.6.4 is added as follows:

"TABLE 1807.1.6.4
EMPIRICAL FOUNDATION WALLS (1,7,8)

Max. Height	Top Edge Support	Min. Thickness	Vertical Steel (2)	Horizontal Steel (3)	Steel at Openings (4)	Max. Lintel Length	Min. Lintel Length
2'(610 mm)	None	6"	(5)	2-#4 Bars	2- #4 Bars above 1- #4 Bar each side 1- #4 Bar below	2'(610 mm)	2"for each foot of opening width; min. 6"
3'(914 mm)	None	6"	#4@32"	3-#4 Bars	2-#4 Bars above 1- #4 Bar each side 1- #4 Bar below	2'(610 mm)	2"for each foot of opening width; min. 6"
4'(1,219 mm)	None	6"	#4@32"	4-#4 Bars	2- #4 Bars above 1- #4 Bar each side 1- #4 Bar below	3'(914 mm)	2"for each foot of opening width; min. 6"
6'(1,829 mm)	Floor or roof 8" Diaphragm (6)		#4@24"	5-#4 Bars	2- #4 Bars above 1- #4 Bar each side 1- #4 Bar below	6'(1,829 mm)	2"for each foot of opening width; min. 6"
8'(2,438 mm)	Floor or roof 8" Diaphragm (6)		#4@24"	6-#4 Bars	2- #4 Bars above 1- #4 Bar each side 1- #4 Bar below	6'(1,829 mm)	2"for each foot of opening width; min. 6"
9'(2,743 mm)	Floor or roof 8" Diaphragm (6)		#4@16"	7-#4 Bars	2- #4 Bars above 1- #4 Bar each side 1- #4 Bar below	6'(1,829 mm)	2"for each foot of opening width; min. 6"

Over 9'(2,743 mm), Engineering required for each column

Footnotes:

(1) Based on 3,000 psi (20.6 Mpa) concrete and 60,000 psi (414 Mpa) reinforcing steel.

(2) To be placed in the center of the wall, and extended from the footing to within three inches (76 mm) of the top of the wall; dowels of #4 bars to match vertical steel placement shall be provided in the footing, extending 24 inches (610 mm) into the foundation wall.

(3) One bar shall be located in the top four inches (102 mm), one bar in the bottom four inches (102 mm) and the other bars equally spaced between. Such bar placement satisfies the requirements of Section 1805.9. Corner reinforcing shall be provided so as to lap 24 inches (610 mm).

(4) Bars shall be placed within two inches (51 mm) of the openings and extend 24 inches (610 mm) beyond the edge of the opening; vertical bars may terminate three inches (76 mm) from the top of the concrete.

(5) Dowels of #4 bar at 32 inches on center shall be provided in the footing, extending 18 inches (457 mm) into the foundation wall.

(6) Diaphragm shall conform to the requirements of Section 2308.

(7) Footing shall be a minimum of nine inches thick by 20 inches wide.

(8) Soil backfill shall be soil classification types GW, GP, SW, or SP, per Table 1610.1. Soil shall not be submerged or saturated in groundwater."

Section 41. Section 15A-3-109 is enacted to read:

15A-3-109. Amendments to Chapters 20 through 22 of IBC.

IBC, Chapters 20 through 22 are not amended.

Section 42. Section 15A-3-110 is enacted to read:

15A-3-110. Amendments to Chapters 23 through 25 of IBC.

(1) A new IBC, Section 2306.1.5, is added as follows: "2306.1.5 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors, C_d, of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1,524 M)."

(2) In IBC, Section 2308.6, a new exception is added as follows: "Exception: Where foundation plates or sills are bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors, embedded at least 7 inches (178 mm) into concrete or masonry and spaced not more than 32 inches (816 mm) apart, there shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate."

(3) IBC, Section 2506.2.1, is deleted and replaced with the following: "2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 13.5.6 of ASCE 7-05, as amended in Section 1613.8, for installation in high seismic areas.

Section 43. Section 15A-3-111 is enacted to read:

15A-3-111. Amendments to Chapters 26 through 28 of IBC

IBC, Chapters 26 through 28 are not amended.

Section 44. Section 15A-3-112 is enacted to read:

15A-3-112. Amendments to Chapters 29 through 31 of IBC.

(1) In IBC, Section 2902.1, the title for Table 2902.1 is deleted and replaced and a new footnote g is added as follows:

(a) "Table 2902.1, Minimum Number of Required Plumbing Facilities[a, g]"; and

(b) "FOOTNOTE: g. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms."

(2) In IBC, Section 3006.5, a new exception is added as follows: "Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less."

Section 45. Section 15A-3-113 is enacted to read:

15A-3-113. Amendments to Chapters 32 through 35 of IBC.

(1) A new section IBC, Section 3401.6, is added as follows: "3401.6 Parapet bracing, wall anchors, and other appendages. Buildings constructed before 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with 75% of the seismic forces as specified in Section 1613. When allowed by the local building official, alternate methods of equivalent strength as referenced in an approved code under Utah Code, Subsection 15A-1-204(6)(a), will be considered when accompanied by engineer-sealed drawings, details, and calculations. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F."

(2) IBC, Section 3408.4, is deleted and replaced with the following: "3408.4 Change in Occupancy. When a change in occupancy results in a structure being reclassified to a higher Occupancy Category (as defined in Table 1604.5), or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy, and ductility of the structure within the context of the existing and retrofit (if any) detailing providing. Alternatively, the building official may allow the structure to be upgraded in accordance with referenced sections as found in an approved code under Utah Code, Subsection 15A-1-204(6)(a).

2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located

in a seismic map area where S_{DS} is less than 0.33, compliance with the seismic requirements of this code and ASCE 7 are not required.

3. Where design occupant load increase is less than 25 occupants and the Occupancy Category does not change."

(3) In IBC, Section 3411.1, the exception is deleted and replaced with the following: "Exception: Type B dwelling or sleeping units required by Section 1107 of this code are not required to be provided in existing buildings and facilities unless being altered or undergoing a change of occupancy classification."

(4) The following referenced standard is added under NFPA in IBC, Chapter 35:

"Number	Title	Referenced in code section number
720–09	Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment"	907.9

(5) The following referenced standard is added under UL in IBC, Chapter 35:

"Number	Title	Referenced in code section number
2034–2008	Standard of Single–and Multiple–station Carbon Monoxide Alarms	907.9"

(6) In IBC, Chapter 35, NFPA referenced standard 10–07 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
10–10	Portable Fire Extinguishers	906.2, 906.3.2, 906.3.4, Table 906.3(1), Table 906.3(2)"

(7) In IBC, Chapter 35, NFPA referenced standard 11–05 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
11–10	Low Expansion Foam	904.7"

(8) In IBC, Chapter 35, NFPA referenced standard 12–05 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
12–08	Carbon Dioxide Extinguishing Systems	904.8, 904.11"

(9) In IBC, Chapter 35, NFPA referenced standard 12A–04 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
12A–09	Halon 1301 Fire Extinguishing Systems	904.9"

(10) In IBC, Chapter 35, NFPA referenced standard 13–07 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
13–10	Installation of Sprinkler Systems	708.2, 903.3.1.1, 903.3.2, 903.3.5.1.1, 903.3.5.3, 904.11, 905.3.4, 907.6.3, 1613.3"

(11) In IBC, Chapter 35, NFPA referenced standard 13D–07 is deleted and replaced with the following:

"Number	Title	Referenced in code Section number
13D–10	Installation of Sprinkler Systems in One– and Two–family Dwellings and Manufactured Homes	903.3.1.3, 903.3.5.1.1"

(12) In IBC, Chapter 35, NFPA referenced standard 13R–07 is deleted and replaced with the following:

"Number	Title	Referenced in code Section number
13R–10	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	903.3.1.2, 903.3.5.1.1, 903.3.5.1.2, 903.4"

(13) In IBC, Chapter 35, NFPA referenced standard 14–07 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
14–10	Installation of Standpipe and Hose System	905.2, 905.3.4, 905.6.2, 905.8"

(14) In IBC, Chapter 35, NFPA referenced standard 17–02 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
17–09	Dry chemical Extinguishing Systems	904.5, 904.11

(15) In IBC, Chapter 35, NFPA referenced standard 17A–02 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
17A–09	Wet Chemical Extinguishing Systems	904.5, 904.11"

(16) In IBC, Chapter 35, NFPA referenced standard 20–07 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
20–10	Installation of Stationary Pumps for Fire Protection	913.1, 913.2.1, 913.5"

(17) In IBC, Chapter 35, NFPA referenced standard 72–07 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
72–10	National Fire Alarm Code	901.6, 903.4.1, 904.3.5, 907.2, 907.2.5, 907.2.11, 907.2.13.2, 907.3, 907.3.3, 907.3.4, 907.5.2.1.2, 907.5.3.3, 907.6, 907.6.1, 907.6.5, 907.7, 907.7.1, 907.7.2, 911.1.5, 3006.5, 3007.6"

(18) In IBC, Chapter 35, NFPA referenced standard 92B–05 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
92B–09	Smoke Management Systems in Malls, Atria and Large Spaces	909.8"

(19) In IBC, Chapter 35, NFPA referenced standard 101–06 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
101–09	Line Safety Code	1028.6.2"

(20) In IBC, Chapter 35, NFPA referenced standard 110–05 is deleted and replaced with the following:

"Number	Title	Referenced in code section number
101–10	Emergency and Standby Power Systems	2702.1"

Section 46. Section 15A-3-201 is enacted to read:

Part 2. Statewide Amendments to IRC

15A-3-201. General provision.

(1) The amendments in this part are adopted as amendments to the IRC to be applicable statewide.

(2) The statewide amendments to the following which may be applied to detached one– and two–family dwellings and multiple single–family dwellings shall be applicable to the corresponding provisions of the IRC:

(a) IBC under Part 1, Statewide Amendments to IBC;

(b) IPC under Part 3, Statewide Amendments to IPC;

(c) IMC under Part 4, Statewide Amendments to IMC;

(d) IFGC under Part 5, Statewide Amendments to IFGC;

(e) NEC under Part 6, Statewide Amendments to NEC; and

(f) IECC under Part 7, Statewide Amendments to IECC.

Section 47. Section 15A-3-202 is enacted to read:

15A-3-202. Amendments to Chapters 1 through 5 of IRC.

(1) In IRC, Section 109:

(a) A new IRC, Section 109.1.5, is added as follows: "R109.1.5 Weather–resistant exterior wall envelope inspections. An inspection shall be made of the weather–resistant exterior wall envelope as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather–resistive barrier."

(b) The remaining sections are renumbered as follows: R109.1.6 Other inspections; R109.1.6.1 Fire– and smoke–resistance–rated construction inspection; R109.1.6.2 Reinforced masonry, insulating concrete form (ICF) and conventionally formed concrete wall inspection; and R109.1.7 Final inspection.

(2) IRC, Section R114.1, is deleted and replaced with the following: "R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume."

(3) In IRC, Section R202, the following definition is added: "CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Utah Code, Subsection 19–4–104(4)."

(4) In IRC, Section R202, the definition of "Cross Connection" is deleted and replaced with the following: "CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow, Water Distribution")."

(5) In IRC, Section R202, the definition of "Potable Water" is deleted and replaced with the following: "POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Utah Code, Title 19, Chapters 4, Safe Drinking Water Act, and 5, Water Quality Act, and the regulations of the public health authority having jurisdiction."

(6) IRC, Figure R301.2(5), is deleted and replaced with Table R301.2(5a) and Table R301.2(5b) as follows:

"TABLE NO. R301.2(5a)

STATE OF UTAH – REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. R301.2(5b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5,920 ft.	43	62
Box Elder County			
Brigham City	4,300 ft.	30	43
Tremonton	4,290 ft.	30	43
Cache County			
Logan	4,530 ft.	35	50
Smithfield	4,595 ft.	35	50
Carbon County			
Price	5,550 ft.	30	43
Daggett County			
Manila	5,377 ft.	30	43
Davis County			
Bountiful	4,300 ft.	30	43
Farmington	4,270 ft.	30	43
Layton	4,400 ft.	30	43
Fruit Heights	4,500 ft.	40	57
Duchesne County			
Duchesne	5,510 ft.	30	43
Roosevelt	5,104 ft.	30	43
Emery County			
Castledale	5,660 ft.	30	43
Green River	4,070 ft.	25	36
Garfield County			
Panguitch	6,600 ft.	30	43
Grand County			
Moab	3,965 ft.	25	36
Iron County			
Cedar City	5,831 ft.	30	43
Juab County			
Nephi	5,130 ft.	30	43
Kane County			
Kanab	5,000 ft.	25	36
Millard County			
Fillmore	5,000 ft.	30	43
Delta	4,623 ft.	30	43
Morgan County			
Morgan	5,064 ft.	40	57
Piute County			
Piute	5,996 ft.	30	43
Rich County			
Woodruff	6,315 ft.	40	57
Salt Lake County			
Murray	4,325 ft.	30	43
Salt Lake City	4,300 ft.	30	43
Sandy	4,500 ft.	30	43
West Jordan	4,375 ft.	30	43
West Valley	4,250 ft.	30	43
San Juan County			
Blanding	6,200 ft.	30	43
Monticello	6,820 ft.	35	50
Sanpete County			
Fairview	6,750 ft.	35	50
Mt. Pleasant	5,900 ft.	30	43
Manti	5,740 ft.	30	43
Ephraim	5,540 ft.	30	43
Gunnison	5,145 ft.	30	43
Sevier County			
Salina	5,130 ft.	30	43
Richfield	5,270 ft.	30	43
Summit County			
Coalville	5,600 ft.	60	86
Kamas	6,500 ft.	70	100
Park City	6,800 ft.	100	142
Park City	8,400 ft.	162	231
Summit Park	7,200 ft.	90	128
Tooele County			
Tooele	5,100 ft.	30	43
Uintah County			
Vernal	5,280 ft.	30	43
Utah County			
American Fork	4,500 ft.	30	43
Orem	4,650 ft.	30	43
Pleasant Grove	5,000 ft.	30	43
Provo	5,000 ft.	30	43
Spanish Fork	4,720 ft.	30	43
Wasatch County			
Heber	5,630 ft.	60	86
Washington County			
Central	5,209 ft.	25	36
Dameron	4,550 ft.	25	36
Leeds	3,460 ft.	20	29
Rockville	3,700 ft.	25	36
Santa Clara	2,850 ft.	15 (1)	21
St. George	2,750 ft.	15 (1)	21
Wayne County			
Loa	7,080 ft.	30	43
Hanksville	4,308 ft.	25	36
Weber County			
North Ogden	4,500 ft.	40	57
Ogden	4,350 ft.	30	43

NOTES

(1) The IRC requires a minimum live load – See R301.6.

(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation."

(7) IRC, Section R301.6, is deleted and replaced with the following: "R301.6 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A–A_o)^2)^{0.5}$ for A greater than A_o, and $P_g = P_o$ for A less than or equal to A_o.

WHERE:

P_g = Ground snow load at a given elevation (psf);

P_o = Base ground snow load (psf) from Table No. R301.2(5a);

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. R301.2(5a);

A = Elevation above sea level at the site (ft./1,000);

A_o = Base ground snow elevation from Table R301.2(5a) (ft./1,000).

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table R301.2(5b), provided the site is no more than 100 ft. higher than the listed elevation.Where the minimum roof live load in accordance with Table R301.6 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf."

(8) In IRC, Section R302.2, the words "Exception: A" are deleted and replaced with the following:

"Exceptions:

1. A common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installation shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

2. In buildings equipped with an automatic residential fire sprinkler system, a".

(9) In IRC, Section R302.2.4, a new exception 6 is added as follows: "6. Townhouses separated by a common 2-hour fire-resistance-rated wall as provided in Section R302.2."

(10) IRC, Sections R311.7.4 through R311.7.4.3, are deleted and replaced with the following: "R311.7.4 Stair treads and risers. R311.7.4.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.7.4.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.7.4.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than 3/8 inch (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less."

(11) In IRC, Section R312.2, the words "adjacent fixed seating" are deleted.

(12) IRC, Section R313, is deleted.

(13) IRC, Section R315.1, is deleted and replaced with the following: "R315.1 Carbon monoxide alarms. For new construction, a listed carbon monoxide alarm shall be installed on each habitable level of dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages."

(14) IRC, Section R315.3, is deleted and replaced with the following: "R315.3 Alarm requirements. Listed single- and multiple-station carbon monoxide alarms shall comply with UL 2034 and shall be installed in accordance with the provision of this code and NFPA 720."

(15) In IRC, Section R403.1.6, a new Exception 4 is added as follows: "4. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines, and at all exterior walls."

(16) In IRC, Section R403.1.6.1, a new exception is added at the end of Item 2 and Item 3 as follows: "Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines, and at all exterior walls."

(17) In IRC, Section R404.1, a new exception is added as follows: "Exception: As an alternative to complying with Sections R404.1 through R404.1.5.3, concrete and masonry foundation walls may be designed in accordance with IBC Sections

1807.1.5 and 1807.1.6 as amended in Section 1807.1.6.4 and Table 1807.1.6.4 under these rules."

Section 48. Section 15A-3-203 is enacted to read:

15A-3-203. Amendments to Chapters 6 through 15 of IRC.

(1) IRC, Sections R612.2 through R612.4.2, are deleted.

(2) IRC, Chapter 11, is deleted and replaced with Chapter 11 of the 2006 International Residential Code and Chapter 4 of the 2006 International Energy Conservation Code.

(3) IRC, Section M1411.6, is deleted.

(4) In IRC, Section M1502.4.4.1, the words "25 feet (7,620 mm)" are deleted and replaced with "35 feet (10,668 mm)".

Section 49. Section 15A-3-204 is enacted to read:

15A-3-204. Amendments to Chapters 16 through 25 of IRC.

A new IRC, Section G2401.2, is added as follows: "G2401.2 Meter Protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must provide access for service and comply with the IBC or the IRC."

Section 50. Section 15A-3-205 is enacted to read:

15A-3-205. Amendments to Chapters 26 and 35 of IRC.

(1) A new IRC, Section P2602.3, is added as follows: "P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized, provided that the source has been developed in accordance with Utah Code, Sections 73-3-1 and 73-3-25, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction."

(2) A new IRC, Section P2602.4, is added as follows: "P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Utah Code, Section 10-8-38; or an approved private sewage disposal system in accordance with Utah Administrative Code, Chapter 4, Rule R317, as administered by the Department of Environmental Quality, Division of Water Quality."

(3) In IRC, Section P2801.7, the word "townhouses" is deleted.

(4) A new IRC, Section P2902.1.1, is added as follows: "P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair, and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly."

(5) IRC, Table P2902.3, is deleted and replaced with the following:

"TABLE P2902.3
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the maintenance. vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.

Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" – 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to ensure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or encumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly."

(6) IRC, Table 2902.3a, is added as follows:

"TABLE 2902.3a
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Air Gap	High or Low	Backsiphonage	See Table P2902.3.1 ASME A112.1.2
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Atmospheric Vacuum Breaker	High or Low	Backsiphonage a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.	ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter."

(7) In IRC, Section P3103.6, the following sentence is added at the end of the paragraph: "Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward."

(8) In IRC, Section P3104.4, the following sentence is added at the end of the paragraph: "Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent."

Section 51. Section 15A-3-206 is enacted to read:

15A-3-206. Amendments to Chapters 36 and 44 of IRC.

(1) In IRC, Section E3902.11, the following words are deleted: "family rooms, dining rooms, living rooms, parlors, libraries, dens, sunrooms, recreation rooms, closets, hallways, and similar rooms or areas".

(2) IRC, Chapter 44, is amended by adding the following reference standard:

"Standard reference number	Title	Referenced in code section number
USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table P2902.3

(3) In IRC, Chapter 44, the following standard is added under NFPA as follows:

"Standard reference number	Title	Referenced in code section number
720-09	Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment	R315.3"

(4) IRC, Appendix O, Gray Water Recycling Systems, is deleted and replaced with Appendix C of the International Plumbing Code as amended by the State Construction Code.

Section 52. Section 15A-3-301 is enacted to read:

Part 3. Statewide Amendments to IPC

15A-3-301. General provision.

The amendments in this part are adopted as amendments to the IPC to be applicable statewide.

Section 53. Section 15A-3-302 is enacted to read:

15A-3-302. Amendments to Chapters 1 and 2 of IPC.

(1) A new IPC, Section 101.2, is added as follows: "For clarification, the International Private Sewage Disposal Code is not part of the plumbing code even though it is in the same printed volume."

(2) In IPC, Section 202, the definition for "Backflow Backpressure, Low Head" is deleted.

(3) In IPC, Section 202, the following definition is added: "Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Utah Code, Subsection 19-4-104(4)."

(4) In IPC, Section 202, the definition for "Cross Connection" is deleted and replaced with the following: "Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow")."

(5) In IPC, Section 202, the definition for "Potable Water" is deleted and replaced with the following: "Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Utah Code, Title 19, Chapters 4, Safe Drinking Water Act, and 5, Water Quality Act, and the regulations of the public health authority having jurisdiction."

Section 54. Section 15A-3-303 is enacted to read:

15A-3-303. Amendments to Chapter 3 of IPC.

(1) In IPC, Table 303.4, the item listed as "Backflow prevention devises" is modified as follows:

(a) in the Third-Party Certified field, after the word "Required" add "See footnote 1";

(b) in the Third-Party Tested field the following is added: "Required see footnote 1"; and

(c) a new footnote 1 is added as follows: "1. Third-party certification will consist of any combination of two certifications, laboratory or field. Acceptable third party laboratory certifying agencies are ASSE, IAPMO, and USC-FCCCHR. USC-FCCCHR currently provides the only field testing of backflow protection assemblies. Also see www.drinkingwater.utah.gov and Division of Drinking Water Rule, Utah Administrative Code, R309-305-6."

(2) IPC, Section 304.3, Meter Boxes, is deleted.

(3) IPC, Section 311.1, is deleted.

(4) IPC, Sections 312.10 through 312.10.2, are deleted and replaced with the following: "312.10 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair, and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly."

Section 55. Section 15A-3-304 is enacted to read:

15A-3-304. Amendments to Chapter 4 of IPC.

(1) In IPC, Section 403.1, a new footnote g is added as follows: "FOOTNOTE: g. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms."

(2) A new IPC, Section 406.4, is added as follows: "406.4 Automatic clothes washer safe pans. Safe pans, when installed under automatic clothes washers, shall be installed in accordance with Section 504.7."

(3) A new IPC, Section 412.5, is added as follows: "412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain."

Section 56. Section 15A-3-305 is enacted to read:

15A-3-305. Amendments to Chapter 5 of IPC.

(1) In IPC, Section 504.7.2, the following is added at the end of the section: "When permitted by the code official, the pan drain may be directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044."

(2) A new IPC, Section 504.7.3, is added as follows: "504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devises, or equipment."

Section 57. Section 15A-3-306 is enacted to read:

15A-3-306. Amendments to Chapter 6 of IPC.

(1) IPC, Section 602.3, is deleted and replaced with the following: "602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Utah Code, Sections 73-3-1, 73-3-3, and 73-3-25, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter."

(2) IPC, Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5, and 602.3.5.1, are deleted.

(3) A new IPC, Section 604.4.1, is added as follows: "604.4.1 Manually operated metering faucets. Self closing or manually operated metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet."

(4) IPC, Section 606.5, is deleted and replaced with the following: "606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11."

(5) A new IPC, Section 606.5.11, is added as follows: "606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi."

(6) IPC, Table 608.1, is deleted and replaced with the following:

"TABLE 608.1
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm rains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.

Spill Resistant Vacuum Breaker (ASSE 1056, USC–FCCCHR)	High or Low	Backsiphonage 1/4" – 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to ensure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches, to any wall, ceiling or encumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly."

(7) IPC, Table 608.1.1, is added as follows:

"TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Air Gap	High or Low	Backsiphonage	See Table 608.15.1 ASME A112.1.2
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Atmospheric Vacuum Breaker	High or Low	Backsiphonage a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.	ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter."

(8) In IPC, Section 608.6, the following sentence is added at the end of the paragraph: "Any connection between potable water piping and sewer-connected waste shall be protected by an air gap."

(9) IPC, Section 608.7, is deleted.

(10) In IPC, Section 608.11, the following sentence is added at the end of the paragraph: "The coating and installation shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturer's instructions."

(11) IPC, Section 608.13.3, is deleted and replaced with the following: "608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CSA CAN/CSA-B64.3. These devices shall be permitted to be installed on residential boilers only, without chemical treatment, where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged."

(12) IPC, Section 608.13.4, is deleted.

(13) IPC, Section 608.13.9, is deleted.

(14) IPC, Section 608.15.3, is deleted and replaced with the following: "608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Connections to residential boilers only, without chemical treatment, shall be protected by a backflow preventer with an intermediate atmospheric vent."

(15) IPC, Section 608.15.4, is deleted and replaced with the following: "608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Fill valves shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor, or device served. No valves shall be installed downstream of the atmospheric vacuum breaker."

(16) In IPC, Section 608.15.4.2, the following is added after the first sentence: "Add-on-backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used."

(17) In IPC, Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows: "608.16.2 Connections to boilers. The potable water supply to the residential boiler only, without chemical treatment, shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA-B64.3."

(18) IPC, Section 608.16.3, is deleted and replaced with the following: "608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers."

(19) In IPC, Section 608.16.4.1, a new exception is added as follows: "Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance."

(20) IPC, Section 608.16.7, is deleted and replaced with the following: "608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8."

(21) IPC, Section 608.16.8, is deleted and replaced with the following: "608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8."

(22) A new IPC, Section 608.16.11, is added as follows: "608.16.11 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2."

(23) IPC, Section 608.17, is deleted.

Section 58. Section 15A-3-307 is enacted to read:

15A-3-307. Amendments to Chapter 7 of IPC.

IPC, Section 701.2, is deleted and replaced with the following: "701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Utah Code, Section 10-8-38; or an approved private sewage disposal system in accordance with Utah Administrative Code, Rule R317-4, as administered by the Department of Environmental Quality, Division of Water Quality."

Section 59. Section 15A-3-308 is enacted to read:

15A-3-308. Amendments to Chapter 8 of IPC.

IPC, Chapter 8, is not amended.

Section 60. Section 15A-3-309 is enacted to read:

15A-3-309. Amendments to Chapter 9 of IPC.

(1) IPC, Section 901.3, is deleted and replaced with the following: "901.3 Chemical waste vent system. The vent system for a chemical waste system shall be independent of the sanitary vent system and shall terminate separately through the roof to the open air or to an air admittance valve provided at least one chemical waste vent in the system terminates separately through the roof to the open air."

(2) In IPC, Section 904.1, when the number of inches is to be specified, "12 inches (304.8mm)" is inserted.

(3) In IPC, Section 904.6, the following sentence is added at the end of the paragraph: "Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward."

(4) In IPC, Section 905.4, the following sentence is added at the end of the paragraph: "Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out."

(5) In IPC, Section 917.8, a new exception is added as follows: "Exception: Air admittance valves shall be permitted in non-neutralized special waste systems provided that they conform to the requirements in Sections 901.3 and 702.5, are tested to ASTM F1412, and are certified by ANSI/ASSE."

Section 61. Section 15A-3-310 is enacted to read:

15A-3-310. Amendments to Chapter 10 of IPC.

In IPC, Section 1002.4, the following is added at the end of the paragraph: "Approved Means of Maintaining Trap Seals. Approved means of maintaining trap seals include the following, but are not limited to the methods cited:

(a) Listed Trap Seal Primer

(b) A hose bibb or bibbs within the same room

(c) Drainage from an untrapped lavatory discharging to the tailpiece of those fixture traps which require priming. All fixtures shall be in the same room and on the same floor level as the trap primer

(d) Barrier type floor drain trap seal protection device meeting ASSE Standard 1072

(e) Deep seal p-trap".

Section 62. Section 15A-3-311 is enacted to read:

15A-3-311. Amendments to Chapter 11 of IPC.

(1) IPC, Section 1104.2, is deleted and replaced with the following: "1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited."

(2) IPC, Section 1108, is deleted.

Section 63. Section 15A-3-312 is enacted to read:

15A-3-312. Amendments to Chapter 12 of IPC.

IPC, Chapter 12, is not amended.

Section 64. Section 15A-3-313 is enacted to read:

15A-3-313. Amendments to Chapter 13 of IPC.

IPC, Chapter 13, is not amended.

Section 65. Section 15A-3-314 is enacted to read:

15A-3-314. Amendments to Chapter 14 of IPC.

(1) In IPC, Chapter 14, the following referenced standard is added under ASSE:

"Standard reference number	Title	Referenced in code section number
1072-2007	Performance Requirements for Barrier Type Floor Drain Trap Seal Protection Devices	1004.2"

(2) In IPC, Chapter 14, the following referenced standard is added:

"Standard reference number	Title	Referenced in code section number
USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1"

(3) IPC, Appendix C, is deleted and replaced with the following Appendix C, Gray Water Recycling Systems, which may be adopted by local jurisdictions only as provided under the State Construction Code: "Appendix C Gray Water Recycling Systems

Note: Section 301.3 of this code requires all plumbing fixtures that receive water or waste to discharge to the sanitary drainage system of the structure. In order to allow for the utilization of a gray water system, Section 301.3 should be revised to read as follows:

In jurisdictions which have adopted this Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connections to drainage system. All plumbing fixtures, drains, appurtenances, and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent indirect waste systems required by Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers, laundry trays, and approved clear water wastes shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an approved gray water system for flushing of water closets and urinals or for subsurface landscape irrigation.

SECTION C101 GENERAL

C101.1 Scope. The provisions of this appendix shall govern the materials, design, construction, and installation of gray water systems for flushing of water closets and urinals (see Figure 2).

C101.2 Recording. The existence of a gray water recycling system shall be recorded on the deed of ownership for that property.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste discharged from lavatories, bathtubs, showers, clothes washers, laundry trays, and clear water wastes which have a pH of 6.0 to 9.0; are non-flammable; non-combustible; without objectionable odors; non-highly pigmented; and will not interfere with the operation of the sewer treatment facility.

C101.4 Permits. Permits shall be required in accordance with Section 106 and may also be required by the local health department.

C101.5 Installation. In addition to the provisions of Section C101, systems for flushing of water closets and urinals shall comply with Section C102. Except as provided for in Appendix C, all systems shall comply with the provisions of the International Plumbing Code.

C101.6 Materials. Above-ground drain, waste, and vent piping for gray water systems shall conform to one of the standards listed in Table 702.1. Gray water underground building drainage and vent pipe shall conform to one of the standards listed in Table 702.2.

C101.7 Tests. Drain, waste, and vent piping for gray water systems shall be tested in accordance with Section 312.

C101.8 Inspections. Gray water systems shall be inspected in accordance with Section 107.

C101.9 Potable water connections. The potable water supply to any building utilizing a gray water recycling system shall be protected against backflow by a reduced pressure principle backflow preventer installed in accordance with this Code.

C101.10 Waste water connections. Gray water recycling systems shall receive only the waste discharge of bathtubs, showers, lavatories, clothes washers, or laundry trays, and other clear water wastes which have a pH of 6.0 to 9.0; are non-flammable; non-combustible; without objectionable odors; non-highly pigmented; and will not interfere with the operation of the sewer treatment facility.

C101.11 Collection reservoir. Gray water shall be collected in an approved reservoir constructed of durable, nonabsorbent, and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Access openings shall be provided to allow inspection and cleaning of the reservoir interior.

C101.12 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter having a design flow rate of less than 0.375 gallons per minute per square foot of effective filter area, or a sand or diatomaceous earth filter designed to handle the anticipated volume of water.

C101.12.1 Required valve. A full-open valve shall be installed downstream of the last fixture connection to the gray water discharge pipe before entering the required filter.

C101.13 Overflow. The collection reservoir shall be equipped with an overflow pipe having the same or larger diameter as the influent pipe for the gray water. The overflow pipe shall be trapped and indirectly connected to the sanitary drainage system.

C101.14 Drain. A drain shall be located at the lowest point of the collection reservoir and shall be indirectly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required in Section C101.12.

C101.15 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 and based on the diameter of the reservoir influent pipe.

SECTION C102 SYSTEMS FOR FLUSHING WATER CLOSETS AND URINALS

C102.1 Collection reservoir. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied with gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to a maximum of 72 hours.

C102.2 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine, or ozone that is recommended for use with the pipes, fittings, and equipment by the manufacturer of the pipe, fittings, and equipment. A minimum of 1ppm residual free chlorine shall be maintained in the gray water recycling system reservoir.

C102.3 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water system. The potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer installed in accordance with this Code. There shall be a full-open valve located on the makeup water supply line to the collection reservoir.

C102.4 Coloring. The gray water shall be dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

C102.5 Materials. Distribution piping shall conform to one of the standards listed in Table 605.4.

C102.6 Identification. Distribution piping and reservoirs shall be identified as containing nonpotable water. Piping identification shall be in accordance with Section 608.8.

SECTION C103 SUBSURFACE LANDSCAPE IRRIGATION SYSTEMS

C103.1 Gray water recycling systems utilized for subsurface irrigation for single family residences shall comply with the requirements of Utah Administrative Code, R317-401, Gray Water Systems. Gray water recycling systems utilized for subsurface irrigation for other occupancies shall comply with Utah Administrative Code, R317-3 Design Requirements for Wastewater Collection, Treatment and Disposal Systems, and Utah Administrative Code, R317-4, Onsite Wastewater Systems."

Section 66. Section 15A-3-401 is enacted to read:

Part 4. Statewide Amendments to IMC

15A-3-401. General provision.

The following are adopted as amendments to the IMC to be applicable statewide:

(1) In IMC, Section 403, a new Section 403.8 is added as follows: "Retrospective effect. Removal, alteration, or abandonment shall not be required, and continued use and maintenance shall be allowed, for a ventilation system within an existing installation that complies with the requirements of this Section 403 regardless of whether the ventilation system satisfied the minimum ventilation rate requirements of prior law."

(2) IMC, Section 1101.10, is deleted.

Section 67. Section 15A-3-501 is enacted to read:

Part 5. Statewide Amendments to IFGC

15A-3-501. General provision.

The following is adopted as an amendment to the IFGC to be applicable statewide, in IFGC, Chapter 4, Section 401, General, a new section IFGC, Section 401.9, is added as follows: "401.9 Meter protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must still provide access for service and comply with the IBC or the IRC."

Section 68. Section 15A-3-601 is enacted to read:

Part 6. Statewide Amendments to NEC

15A-3-601. General provision.

The following are adopted as amendments to the NEC to be applicable statewide:

(1) During the period of time when the adopted IRC has not yet incorporated the latest residential electrical provisions contained in the adopted NEC, the IRC provisions shall prevail as the adopted residential electrical standards applicable to installations applicable under the IRC. All other installations shall comply with the adopted NEC.

(2) In NEC, Section 310.15(B)(6), the second sentence is deleted and replaced with the following: "For application of this section, the main power feeder shall be the feeder(s) between the main disconnect and the panelboard(s)."

(3) In NEC, Section 338.10(B)(4)(a), the following words are added at the end of the first sentence after Section 334: "excluding Section 334.80."

Section 69. Section 15A-3-701 is enacted to read:

Part 7. Statewide Amendments to IECC

15A-3-701. General provision.

The following is adopted as an amendment to the IECC to be applicable statewide, in IECC, Section 504.4, a new exception is added as follows: "Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3."

Section 70. Section 15A-3-801 is enacted to read:

Part 8. Installation and Safety Requirements for Mobile Homes Built Before June 15, 1976

15A-3-801. General provision.

Mobile homes built before June 15, 1976 that are subject to relocation, building alteration, remodeling, or rehabilitation shall comply with the following:

(1) Related to exits and egress windows:

(a) Egress windows. The home has at least one egress window in each bedroom, or a window that meets the minimum specifications of the U.S. Department of Housing and Urban Development's (HUD) Manufactured Homes Construction and Safety Standards (MHCSS) program as set forth in 24 C.F.R. Parts 3280 and 3283, MHCSS 3280.106 and 3280.404 for manufactured homes. These standards require the window to be at least 22 inches in the horizontal or vertical position in its least dimension and at least five square feet in area. The bottom of the window opening shall be no more than 36 inches above the floor, and the locks and latches and any window screen or storm window devices that need to be operated to permit exiting shall not be located more than 54 inches above the finished floor.

(b) Exits. The home is required to have two exterior exit doors, located remotely from each other, as required in MHCSS 3280.105. This standard requires that single-section homes have the doors no less than 12 feet, center-to-center, from each other, and multisection home doors no less than 20 feet center-to-center from each other when measured in a straight line, regardless of the length of the path of travel between the doors. One of the required exit doors must be accessible from the doorway of each bedroom and no more than 35 feet away from any bedroom doorway. An exterior swing door shall have a 28-inch-wide by 74-inch-high clear opening and sliding glass doors shall have a 28-inch-wide by 72-inch-high clear opening. Each exterior door other than screen/storm doors shall have a key-operated lock that has a passage latch; locks shall not require the use of a key or special tool for operation from the inside of the home.

(2) Related to flame spread:

(a) Walls, ceilings, and doors. Walls and ceilings adjacent to or enclosing a furnace or water heater shall have an interior finish with a flame-spread rating not exceeding 25. Sealants and other trim materials two inches or less in width used to finish adjacent surfaces within these spaces are exempt from this provision, provided all joints are supported by framing members or materials with a flame spread rating of 25 or less. Combustible doors providing interior or exterior access to furnace and water heater spaces shall be covered with materials of limited combustibility (i.e., 5/16-inch gypsum board, etc.), with the surface allowed to be interrupted for louvers ventilating the space. However, the louvers shall not be of materials of greater combustibility than the door itself (i.e., plastic louvers on a wooden door). Reference MHCSS 3280.203.

(b) Exposed interior finishes. Exposed interior finishes adjacent to the cooking range (surfaces include vertical surfaces between the range top and overhead cabinets, the ceiling, or both) shall have a flame-spread rating not exceeding 50, as required by MHCSS 3280.203. Backsplashes not exceeding six inches in height are exempted. Ranges shall have a vertical clearance above the cooking top of

not less than 24 inches to the bottom of combustible cabinets, as required by MHCSS 3280.204(e).

(3) Related to smoke detectors:

(a) Location. A smoke detector shall be installed on any ceiling or wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door, unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living-area side, as close to the door as practicable, as required by MHCSS 3280.208. Homes with bedroom areas separated by anyone or combination of common-use areas such as a kitchen, dining room, living room, or family room (but not a bathroom or utility room) shall be required to have one detector for each bedroom area. When located in the hallways, the detector shall be between the return air intake and the living areas.

(b) Switches and electrical connections. Smoke detectors shall have no switches in the circuit to the detector between the over-current protection device protecting the branch circuit and the detector. The detector shall be attached to an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The detector shall not be placed on the same branch circuit or any circuit protected by a ground-fault circuit interrupter.

(4) Related to solid-fuel-burning stoves/fireplaces:

(a) Solid-fuel-burning fireplaces and fireplace stoves. Solid-fuel-burning, factory-built fireplaces, and fireplace stoves may be used in manufactured homes, provided that they are listed for use in manufactured homes and installed according to their listing/manufacturer's instructions and the minimum requirements of MHCSS 3280.709(g).

(b) Equipment. A solid-fuel-burning fireplace or fireplace stove shall be equipped with an integral door or shutters designed to close the fire chamber opening and shall include complete means for venting through the roof, a combustion air inlet, a hearth extension, and means to securely attach the unit to the manufactured home structure.

(i) Chimney. A listed, factory-built chimney designed to be attached directly to the fireplace/fireplace stove and equipped with, in accordance with the listing, a termination device and spark arrester, shall be required. The chimney shall extend at least three feet above the part of the roof through which it passes and at least two feet above the highest elevation of any part of the manufactured home that is within 10 feet of the chimney.

(ii) Air-intake assembly and combustion-air inlet. An air-intake assembly shall be installed in accordance with the terms of listings and the manufacturer's instruction. A combustion-air inlet shall conduct the air directly into the fire chamber and shall be designed to prevent material from the hearth from dropping on the area beneath the manufactured home.

(iii) Hearth. The hearth extension shall be of noncombustible material that is a minimum of 3/8-inch thick and shall extend a minimum of 16 inches in front and eight inches beyond each side of the fireplace/fireplace stove opening. The hearth shall also extend over the entire surface beneath a fireplace stove and beneath an elevated and overhanging fireplace.

(5) Related to electrical wiring systems:

(a) Testing. All electrical systems shall be tested for continuity in accordance with MHCSS 3280.810, to ensure that metallic parts are properly bonded; tested for operation, to demonstrate that all equipment is connected and in working order; and given a polarity check, to determine that connections are proper.

(b) 5.2 Protection. The electrical system shall be properly protected for the required amperage load. If the unit wiring employs aluminum conductors, all receptacles and switches rated at 20 amperes or less that are directly connected to the aluminum conductors shall be marked CO/ALA. Exterior receptacles, other than heat tape receptacles, shall be of the ground-fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper-clad aluminum) must be connected in accordance with NEC, Section 110-14.

(6) Related to replacement furnaces and water heaters:

(a) Listing. Replacement furnaces or water heaters shall be listed for use in a manufactured home. Vents, roof jacks, and chimneys necessary for the installation shall be listed for use with the furnace or water heater.

(b) Securement and accessibility. The furnace and water heater shall be secured in place to avoid displacement. Every furnace and water heater shall be accessible for servicing, for replacement, or both as required by MHCSS 3280.709(a).

(c) Installation. Furnaces and water heaters shall be installed to provide complete separation of the combustion system from the interior atmosphere of the manufactured home, as required by MHCSS.

(i) Separation. The required separation may be achieved by the installation of a direct-vent system (sealed combustion system) furnace or water heater or the installation of a furnace and water heater venting and combustion systems from the interior atmosphere of the home. There shall be no doors, grills, removable access panels, or other openings into the enclosure from the inside of the manufactured home. All openings for ducts, piping, wiring, etc., shall be sealed.

(ii) Water heater. The floor area in the area of the water heater shall be free from damage from moisture to ensure that the floor will support the weight of the water heater.

Section 71. Section 15A-4-101 is enacted to read:

CHAPTER 4. LOCAL AMENDMENTS INCORPORATED AS PART OF STATE CONSTRUCTION CODE

Part 1. Local Amendments to IBC

15A-4-101. General provision.

The amendments in this part are adopted as amendments to the IBC to be applicable to the specified jurisdiction.

Section 72. Section 15A-4-102 is enacted to read:

15A-4-102. Amendments to IBC applicable to Brian Head Town.

The following amendment is adopted as an amendment to the IBC for Brian Head Town, Subsection 15A-3-104(6) that amends IBC, Section (F)903.2.8, is deleted and replaced with the following: "(F)903.2.8 Group R. An automatic sprinkler system installed in accordance with Section (F)903.3 shall be provided throughout all buildings with a Group R fire area.

Exception:

1. Detached one and two family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one and two-family dwellings. Except that an automatic fire sprinkler system shall be installed in all one- and two-family dwellings and townhouses over 3,000 square feet in size of defined living space (garage is excluded from defined living space) in accordance with Section (F)903.3.1 of the International Building Code. In areas not served by Brian Head Town culinary water services, NFPA Standard 1142 for water supplies for rural fire fighting shall apply. Any one- and two-family dwellings and townhouses that are difficult to locate or access, as determined by the authority having jurisdiction, shall be required to follow the guidelines as set forth in the NFPA Standard 1142 regardless of the size of the building.

2. Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system."

Section 73. Section 15A-4-103 is enacted to read:

15A-4-103. Amendments to IBC applicable to City of Farmington.

The following amendments are adopted as amendments to the IBC for the City of Farmington:

(1) A new IBC, Section (F) 903.2.13, is added as follows: "(F) 903.2.13 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13D, when any of the following conditions are present:

1. The structure is over two stories high, as defined by the building code;

2. The nearest point of structure is more than 150 feet from the public way;

3. The total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. The structure is located on a street constructed after March 1, 2000, that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief."

(2) A new IBC, Section 907.9, is added as follows: "907.9 Alarm Circuit Supervision. Alarm circuits in alarm systems provided for commercial uses (defined as other than one- and two-family dwellings and townhouses) shall have Class "A" type of supervision. Specifically, Type "B" or End-of-line resistor and horn supervised systems are not allowed."

(3) In NFPA Section 13-07, new sections are added as follows: "6.8.6 FDC Security Locks Required. All Fire Department connections installed for fire sprinkler and standpipe systems shall have approved security locks.

6.10 Fire Pump Disconnect Signs. When installing a fire pump, red plastic laminate signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

22.1.6 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

22.2.2.3 Verification of Water Supply:

22.2.2.3.1 Fire Flow Tests. Fire flow tests for verification of water supply shall be conducted and witnessed for all applications other than residential unless directed otherwise by the Chief. For residential water supply, verification shall be determined by administrative procedure.

22.2.2.3.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable water supply.

24.2.3.7 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Commercial:

FLUSH-Witness Underground Supply Flush;

ROUGH Inspection–Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test;

FINAL Inspection–Head Installation and Escutcheons, Inspectors Test Location and Flow, Main Drain Flow, FDC Location and Escutcheon, Alarm Function, Spare Parts, Labeling of Components and Signage, System Completeness, Water Supply Pressure Verification, Evaluation of Any Unusual Parameter."

Section 74. Section 15A-4-104 is enacted to read:

15A-4-104. Amendments to IBC applicable to City of North Salt Lake.

The following amendment is adopted as an amendment to the IBC for the City of North Salt Lake, a new IBC, Section (F)903.2.13, is added as follows: "(F)903.2.13 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13D, when the following condition is present:

1. The structure is over 6,200 square feet.

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief."

Section 75. Section 15A-4-105 is enacted to read:

15A-4-105. Amendments to IBC applicable to Park City Corporation or Park City Fire District.

(1) The following amendment is adopted as an amendment to the IBC for the Park City Corporation, in IBC, Section 3409.2, exception 3, is modified to read as follows: "3. Designated as historic under a state or local historic preservation program."

(2) The following amendments are adopted as amendments to the IBC for the Park City Corporation and Park City Fire District:

(a) IBC, Section (F)903.2, is deleted and replaced with the following: "(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

All new construction having more than 6,000 square feet on any one floor, except R–3 occupancy.

All new construction having more than two (2) stories, except R–3 occupancy.

All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone."

(b) In IBC, Table 1505.1, new footnotes d and e are added as follows: "d. Wood roof covering assemblies are prohibited in R–3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R–3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

"TABLE 1505.1.1
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

TABLE 1505.1.2
PROHIBITION/ALLOWANCE OF WOOD ROOFING

Rating	R-3 Occupancy	All Other Occupancies
Less than or equal to 11	Wood roof covering assemblies per Table 1505.1 are allowed	Wood roof covering assemblies per Table 1505.1 are allowed
Greater than or equal to 12	Wood roof covering is prohibited	Wood roof covering assemblies with a Class A rating are allowed"

(c) IBC, Appendix C, is adopted.

Section 76. Section 15A-4-106 is enacted to read:

15A-4-106. Amendments to IBC applicable to Salt Lake City.

The following amendment is adopted as an amendment to the IBC for Salt Lake City, in IBC, Section 1008.1.9.7, a new exception is added as follows: "Exception: In International Airport areas designated as Group "A" Occupancies where national security interests are present, the use of panic hardware with delayed egress is allowed when all provisions of Section 1008.1.9.7 are met and under item #4 1 second is changed to 2 seconds."

Section 77. Section 15A-4-107 is enacted to read:

15A-4-107. Amendments to IBC applicable to Sandy City.

The following amendments are adopted as amendments to the IBC for Sandy City:

(1) A new IBC, Section (F)903.2.13, is added as follows: "(F)903.2.13 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2009 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.
Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

(2) A new IBC, Appendix L, is added and adopted as follows: "Appendix L BUILDINGS AND STRUCTURES CONSTRUCTED IN AREAS DESIGNATED AS WILDLAND-URBAN INTERFACE AREAS

AL 101.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 International Wildland-Urban Interface Code, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.
(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows: "504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 International Wildland-Urban Interface Code.
(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted."

Section 78. Section 15A-4-201 is enacted to read:

Part 2. Local Amendments to IRC

15A-4-201. General provision.

(1) The amendments in this part are adopted as amendments to the IRC to be applicable to specified jurisdiction.

(2) A local amendment to the following which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC for the local jurisdiction to which the local amendment has been made:

(a) IBC under Part 1, Local Amendments to IBC;

(b) IPC under Part 3, Local Amendments to IPC;

(c) IMC under Part 4, Local Amendments to IMC;

(d) IFGC under Part 5, Local Amendments to IFGC;

(e) NEC under Part 6, Local Amendments to NEC; and

(f) IECC under Part 7, Local Amendments to IECC.

Section 79. Section 15A-4-202 is enacted to read:

15A-4-202. Amendments to IRC applicable to Brian Head Town.

The following amendment is adopted as an amendment to the IRC for Brian Head Town, a new IRC, Section R324, is added as follows: "Section R324 Automatic Sprinkler Systems. An automatic fire sprinkler system shall be installed in all one- and two-family dwellings and townhouses over 3,000 square feet in size of defined living space (garage is excluded from defined living space) in accordance with Section (F)903.3.1 of the International Building Code. In areas not served by Brian Head Town culinary water services, NFPA Standard 1142 for water supplies for rural fire fighting shall apply. Any one- and two-family dwellings and townhouses that are difficult to locate or access, as determined by the authority having jurisdiction, shall be required to follow the guidelines as set forth in the NFPA Standard 1142 regardless of the size of the building"

Section 80. Section 15A-4-203 is enacted to read:

15A-4-203. Amendments to IRC applicable to City of Farmington.

The following amendments are adopted as amendments to the IRC for the City of Farmington:

(1) In IRC, R324 Automatic Sprinkler Systems, new IRC, Sections R324.1 and R324.2 are added as follows: "R324.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;

2. the nearest point of structure is more than 150 feet from the public way;

3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13D."

(2) In IRC, Chapter 44, the following NFPA referenced standards are added as follows:

"TABLE

ADD	
13D-07	Installation of Sprinkler Systems in One-and Two-family Dwellings and Manufactured Homes, as amended by these rules
13R-07	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height"

(3) In NFPA, Section 13D-07, new sections are added as follows: "1.15 Reference to NFPA 13D. All references to NFPA 13D in the codes, ordinances, rules, or regulations governing NFPA 13D systems shall be read to refer to "modified NFPA 13D" to reference the NFPA 13D as amended by additional regulations adopted by Farmington City.

4.9 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Residential:

ROUGH Inspection-Verify Water Supply Piping Size and Materials, Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test.

FINAL Inspection-Inspectors Test Flow, System Completeness, Spare Parts, Labeling of Components and Signage, Alarm Function, Water Supply Pressure Verification.

5.2.2.3 Exposed Piping of Metal. Exposed Sprinkler Piping material in rooms of dwellings shall be of Metal.

EXCEPTIONS:

a. CPVC Piping is allowed in unfinished mechanical and storage rooms only when specifically listed for the application as installed.

b. CPVC Piping is allowed in finished, occupied rooms used for sports courts or similar uses only when the ceiling/floor framing above is constructed entirely of non-combustible materials, such as a concrete garage floor on metal decking.

5.2.2.4 Water Supply Piping Material. Water Supply Piping from where the water line enters the dwelling adjacent to and inside the foundation to the fire sprinkler contractor point-of-connection shall be metal, suitable for potable plumbing systems. See Section 7.1.4 for valve prohibition in such piping. Piping down stream from the point-of-connection used in the fire sprinkler system, including the riser, shall conform to NFPA 13D standards.

5.4 Fire Pump Disconnect Signs. When installing a Fire Pump, Red Plastic Laminate Signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

7.1.4 Valve Prohibition. NFPA 13D, Section 7.1 is hereby modified such that NO VALVE is permitted from the City Water Meter to the Fire Sprinkler Riser Control.

7.6.1 Mandatory Exterior Alarm. Every dwelling that has a fire sprinkler system shall have an exterior alarm, installed in an approved location. The alarm shall be of the combination horn/strobe or electric bell/strobe type, approved for outdoor use.

8.1.05 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment, shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

8.7 Verification of Water Supply:

8.7.1 Fire Flow Tests: Fire Flow Tests for verification of Water Supply shall be conducted and witnesses for all applications other than residential, unless directed otherwise by the Chief. For residential Water Supply, verification shall be determined by administrative procedure.

8.7.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable Water Supply.

Section 81. Section 15A-4-204 is enacted to read:

15A-4-204. Amendments to IRC applicable to Morgan City Corporation or Morgan County.

(1) The following amendment is adopted as an amendment to the IRC for the Morgan City Corporation, in IRC, Section R105.2, Work Exempt From Permit, a new list item number 11 is added as follows: "11. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria are met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grandfathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1,000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official. Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure."

(2) The following amendment is adopted as an amendment to the IRC for Morgan County, in IRC, Section R105.2, a new list item number 11 is added as follows: "11. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria are met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grandfathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1,000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department. Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure."

Section 82. Section 15A-4-205 is enacted to read:

15A-4-205. Amendments to IRC applicable to City of North Salt Lake.

The following amendment is adopted as an amendment to the IRC for the City of North Salt Lake, a new IRC, Section R324, is added as follows: "Section R324 Automatic Sprinkler System Requirements. R324.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13D."

Section 83. Section 15A-4-206 is enacted to read:

15A-4-206. Amendments to IRC applicable to Park City Corporation or Park City Fire District.

(1) The following amendment is adopted as an amendment to the IRC for the Park City Corporation, Appendix P, of the 2006 IRC is adopted.

(2) The following amendments are adopted as amendments to the IRC for Park City Corporation and Park City Fire District:

(a) IRC, Section R905.7, is deleted and replaced with the following: "R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE

WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited"

(b) IRC, Section R905.8, is deleted and replaced with the following: "R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE

WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited"

(c) Appendix K is adopted.

Section 84. Section 15A-4-207 is enacted to read:

15A-4-207. Amendments to IRC applicable to Sandy City.

The following amendment is adopted as an amendment to the IRC for Sandy City, a new IRC, Section R324, is added as follows: "Section R324 IGNITION RESISTANT CONSTRUCTION

R324.1 General. Buildings and structures constructed in areas designated as Wildland–Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland–Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 IWUIC, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION–RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 IWUIC.

(ii) In Section 505 of the IWUIC Class 2 IGNITION–RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted."

Section 85. Section 15A-4-301 is enacted to read:

Part 3. Local Amendment to IPC

15A-4-301. General Provision.

The amendments in this part are adopted as amendments to the IPC to be applicable to specified jurisdiction.

Section 86. Section 15A-4-302 is enacted to read:

15A-4-302. Amendments to IPC applicable to Salt Lake City.

The following amendment is adopted as an amendment to the IPC for Salt Lake City. IPC, Appendix C, as specified and amended in Subsection 15A–3–314(3).

Section 87. Section 15A-4-303 is enacted to read:

15A-4-303. Amendments to IPC applicable to South Jordan.

The following amendments are adopted as amendments to the IPC for South Jordan**:**

(1) IPC, Section 312.10.2, is deleted and replaced with the following: "312.10.2 Testing. Reduced pressure principle backflow preventer assemblies, double check–valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies, hose connection backflow preventers, and spill–proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA–B64.10, or CSA–B64.10.1. Assemblies, other than the reduced pressure principle assembly, protecting lawn irrigation systems that fail the annual test shall be replaced with a reduced pressure principle assembly."

(2) IPC, Section 608.16.5, is deleted and replaced with the following: "608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by a reduced pressure principle backflow preventer."

Section 88. Section 15A-4-401 is enacted to read:

Part 4. Local Amendment to IMC

15A-4-401. General provision.

No local amendments to the IMC are adopted.

Section 89. Section 15A-4-501 is enacted to read:

Part 5. Local Amendment to IFGC

15A-4-501. General provision.

No local amendments to the IFGC are adopted.

Section 90. Section 15A-4-601 is enacted to read:

Part 6. Local Amendment to NEC

15A-4-601. General provision.

No local amendments to the NEC are adopted.

Section 91. Section 15A-4-701 is enacted to read:

Part 7. Local Amendment to IECC

15A-4-701. General provision.

No local amendments to the IECC are adopted.

Section 92. Section 15A-5-101 is enacted to read:

CHAPTER 5. STATE FIRE CODE ACT

Part 1. General Provisions

15A-5-101. Title -- Adoption of code.

In accordance with Chapter 1, Part 4, State Fire Code Administration Act, the Legislature repeals the State Fire Code in effect on July 1, 2010, and adopts this chapter as the State Fire Code.

Section 93. Section 15A-5-102 is enacted to read:

15A-5-102. Definitions.

As used in this chapter:

(1) "Appreciable depth" means a depth greater than 1/4 inch.

(2) "AHJ" means "authority having jurisdiction," which is:

(a) the State Fire Marshal;

(b) an authorized deputy of the State Fire Marshal; or

(c) the local fire enforcement authority.

(3) "Division" means the State Fire Marshal Division created in Section 53–7–103.

(4)(a) "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals

living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities.

(b) "Dwelling unit" includes a hotel room, dormitory room, apartment, condominium, sleeping room in a nursing home, or similar living unit.

(5) "IFC" means the edition of the International Fire Code adopted under Section 15A-5-103.

(6) "NFPA" means the edition of the National Fire Protection Association adopted under Section 15A-5-103.

(7) "UL" means Underwriters Laboratories, Inc.

Section 94. Section 15A-5-103 is enacted to read:

15A-5-103. Nationally recognized codes incorporated by reference.

The following codes are incorporated by reference into the State Fire Code:

(1) the International Fire Code, 2009 edition, excluding appendices, as issued by the International Code Council, Inc., except as amended by Part 2, Statewide Amendments and Additions to IFC Incorporated as Part of State Fire Code;

(2) National Fire Protection Association, NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 edition, except as amended by Part 3, Statewide Amendments and Additions to NFPA Incorporated as Part of State Fire Code; and

(3) National Fire Protection Association, NFPA 1403, Standard on Live Fire Training Evolutions, 2007 edition, except as amended by Part 3, Statewide Amendments and Additions to NFPA Incorporated as Part of State Fire Code.

Section 95. Section 15A-5-201 is enacted to read:

Part 2. Statewide Amendments and Additions to IFC Incorporated as Part of State Fire Code

15A-5-201. General provisions.

The amendments and additions in this part to the IFC are adopted for application statewide.

Section 96. Section 15A-5-202 is enacted to read:

15A-5-202. Amendments and additions to IFC related to administration, permits, definitions, general, and emergency planning.

(1) For IFC, Scope and Administration:

(a) IFC, Chapter 1, Section 105.6.16, Flammable and combustible liquids, is amended to add the following section: "12. The owner of an underground tank that is out of service for longer than one year shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ."

(b) IFC, Chapter 1, Section 109.2, Notice of violation, is amended as follows: On line three, after the words "is in violation of this code," insert in the section the phrase "or other pertinent laws or ordinances".

(2) For IFC, Definitions:

(a) IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Educational Group E, Day care, is amended as follows: On line three delete the word "five" and replace it with the word "four".

(b) IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I, Group I-1, is amended as follows: On line 10 add "Type I" in front of the words "Assisted living facilities".

(c) IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I, Group I-2, is amended as follows:

(i) On line three delete the word "for" and insert the following into the sentence "on a 24-hour basis of more than three".

(ii) On line 10, after the words "Nursing homes", add the following: "both intermediate nursing care and skilled nursing care facilities, ambulatory surgical centers with five or more operating rooms where care is less than 24 hours, and Type II assisted living facilities. Type II assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type II assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility".

(d) IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I, Group I-4, Day care facilities, Child care facility, is amended as follows:

(i) On line three delete the word "five" and replace it with the word "four".

(ii) On line two of the exception delete the word "five" and replace it with the word "four".

(e) IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Residential Group R, R-2, is amended to add the following: "Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3."

(3) For IFC, General Requirements:

(a) IFC, Chapter 3, Section 304.1.2, Vegetation, is amended as follows: Delete line six and replace it with: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance".

(b) IFC, Chapter 3, Section 311.1.1, Abandoned premises, is amended as follows: On line 10 delete the words "International Property Maintenance Code and the".

(c) IFC, Chapter 3, Section 311.5, Placards, is amended as follows: On line three delete the word "shall" and replace it with the word "may".

(d) IFC, Chapter 3, Section 315.2.1, Ceiling clearance, is amended to add the following: "Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall-mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard."

Section 97. Section 15A-5-203 is enacted to read:

15A-5-203. Amendments and additions to IFC related to fire safety, building, and site requirements.

(1) For IFC, Emergency Planning and Preparedness:

(a) IFC, Chapter 4, Section 404.2, Where required, Subsection 8, is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

(b) IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

(i) "e. Secondary schools in Group E occupancies shall have an emergency evacuation drill conducted at least every two months, to a total of four emergency evacuation drills during the nine-month school year. The first emergency evacuation drill shall be conducted within 10 school days of the beginning of classes."

(ii) "f. In Group E occupancies, excluding secondary schools, if the AHJ approves, the monthly required emergency evacuation drill can be substituted by a security or safety drill to include shelter in place, earthquake drill, or lock down for violence. The routine emergency evacuation drill for fire must by conducted at least every other evacuation drill."

(iii) "g. A-3 occupancies in academic buildings of institutions of higher learning are required to have one emergency evacuation drill per year, provided the following conditions are met:

(A) The building has a fire alarm system in accordance with Section 907.2.

(B) The rooms classified as assembly shall have fire safety floor plans as required in Section 404.3.2(4) posted.

(C) The building is not classified a high-rise building.

(D) The building does not contain hazardous materials over the allowable quantities by code."

(2) For IFC, Fire Service Features:

(a) In IFC, Chapter 5, a new Section 501.5, Access grade and fire flow, is added as follows: "An authority having jurisdiction over a structure built in accordance with the requirements of the International Residential Code as adopted in the State Construction Code, may require an automatic fire sprinkler system for the structure only by ordinance and only if any of the following conditions exist:

(i) the structure:

(A) is located in an urban-wildland interface area as provided in the Utah Wildland Urban Interface Code adopted as a construction code under the State Construction Code; and

(B) does not meet the requirements described in Utah Code, Subsection 65A-8-203(3)(a) and Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance;

(ii) the structure is in an area where a public water distribution system with fire hydrants does not exist as required in Utah Administrative Code, R309-550-5, Water Main Design;

(iii) the only fire apparatus access road has a grade greater than 10% for more than 500 continual feet; or

(iv) (A) the water supply to the structure does not provide at least 500 gallons fire flow per minute for a minimum of 30 minutes, if the total square foot living space of the structure is equal to or less than 5,000 square feet;

(B) the water supply to the structure does not provide at least 750 gallons per minute fire flow for a minimum of 30 minutes, if the total square foot living space exceeds 5,000 square feet, but is equal to or less than 10,000 square feet; or

(C) the water supply to the structure does not provide at least 1,000 gallons per minute fire flow for a minimum of 30 minutes, if the total square foot living space exceeds 10,000 square feet.

(b) In IFC, Chapter 5, a new Section 507.1.1, Isolated one- and two-family dwellings, is added as follows: "Fire flow may be reduced for an isolated one- and two-family dwelling when the authority having jurisdiction over the dwelling determines that the development of a full fire-flow requirement is impractical."

(c) In IFC, Chapter 5, a new Section 507.1.2, Pre-existing subdivision lots, is added as follows "Total water supply requirements shall not exceed the fire flows described in Section 501.5(iv) for the largest one- or two-family dwelling, protected by an automatic fire sprinkler system, on a subdivision lot platted before December 31, 1980, unless the municipality or county in which the lot is located provides the required fire flow capacity."

(3) For IFC, Building Services and Systems:

(a) IFC, Chapter 6, Section 607.4, Elevator keys, is deleted and rewritten as follows: "Firefighter service keys shall be kept in a "Supra-Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service. The elevator key box shall be accessed using a 6049 numbered key. All existing elevator key box locks that do not use the numbered 6049 key shall be changed to the 6049 key by December 31, 2011."

(b) IFC, Chapter 6, Section 609.1, General, is amended as follows: On line three, after the word "Code", add the words "and NFPA 96".

(4) For IFC, Fire-Resistance-Rated Construction, IFC, Chapter 7, Section 703.2, is amended to add the following: "Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closers may be of the friction hold-open type on classrooms' doors with a rating of 20 minutes or less only."

Section 98. Section 15A-5-204 is enacted to read:

15A-5-204. Amendments and additions to IFC related to fire protection systems.

For IFC, Fire Protection Systems:

(1) IFC, Chapter 9, Section 901.2, Construction documents, is amended to add the following at the end of the section: "The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents."

(2) IFC, Chapter 9, Section 902.1, Definitions, RECORD DRAWINGS, is deleted and rewritten as follows: "Drawings ("as builts") that document all aspects of a fire protection system as installed."

(3) IFC, Chapter 9, Section 903.2.1.2, Group A-2, is amended to add the following subsection: "4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used."

(4) IFC, Chapter 9, Section 903.2.2, Group B ambulatory health care facilities, is amended as follows: On line three delete the words "all fire areas" and replace with the word "buildings".

(5) IFC, Chapter 9, Section 903.2.4, Group F-1, Subsection 2, is deleted and rewritten as follows: "A Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access."

(6) IFC, Chapter 9, Section 903.2.7, Group M, Subsection 2, is deleted and rewritten as follows: "A Group M fire area is located more than three stories above the lowest level of fire department vehicle access."

(7) IFC, Chapter 9, Section 903.2.8 Group R, is amended to add the following: "Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings."

(8) IFC, Chapter 9, Section 903.2.8, Group R, is amended to add a second exception as follows: "Exception: Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system."

(9) IFC, Chapter 9, Section 903.2.9, Group S-1, Subsection 2, is deleted and rewritten as follows: "A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access."

(10) (a) IFC, Chapter 9, Section 903.2.10, Group S-2 enclosed parking garages, is deleted and rewritten as follows: "An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 of the International Building Code or where located beneath other groups."

(b) IFC, Chapter 9, Section 903.2.10, Group S-2 enclosed parking garages, the exception is deleted and rewritten as follows: "Exception: Parking garages of less than 5,000 square feet (464m2) accessory to Group R-3 occupancies."

(c) IFC, Chapter 9, Section 903.2.10, Group S-2 enclosed parking garages, is amended to add a second exception, as follows: "Exception: Open parking garages not located beneath other groups if one of the following conditions are met:

1. Access is provided for fire fighting operations to within 150 feet (45,720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

2. Class I standpipes are installed throughout the parking garage."

(11) IFC, Chapter 9, Section 903.2.10.1, Commercial parking garages, is deleted and rewritten as follows: "An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses."

(12) IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: "903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13, is allowed up to 20 heads. The number of sprinkler heads can be expanded as permitted by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns."

(13) IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: "903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13R, is allowed up to 20 heads. The number of sprinkler heads can be expanded as permitted by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns."

(14) IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: "903.3.1.3.1

Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction installed in accordance with NFPA 13D is allowed up to 20 heads. The number of sprinkler heads can be expanded as permitted by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns."

(15) IFC, Chapter 9, Section 903.3.5, Water supplies, is amended as follows: On line six, after the word "Code", add "and as amended in Utah's State Construction Code".

(16) IFC, Chapter 9, Section 903.5 is amended to add the following subsection: "903.5.1 Antifreeze Replacement. Whenever the automatic sprinkler system protecting residences and dwelling units of mixed occupancies that use antifreeze is drained, the replacement antifreeze shall be properly mixed and tested, but shall not exceed a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns."

(17) IFC, Chapter 9, Section 903.6, Existing Buildings, and Chapter 46, Section 4603.4, Sprinkler systems, are amended to add the following subsection to each section: "903.6.3 Group A-2 and 4603.4.3 Group A-2. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used."

(18) IFC, Chapter 9, Section 904.11, Commercial cooking systems, is deleted and rewritten as follows: "The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The exception in Section 904.11 is not deleted and shall remain as currently written in the IFC."

(19) IFC, Chapter 9, Section 904.11.3, Carbon dioxide systems, and Section 904.11.3.1, Ventilation system, are deleted and rewritten as follows:

(a) "Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical are prohibited and shall be removed from service."

(b) "Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system."

(20) IFC, Chapter 9, Section 904.11.4, Special provisions for automatic sprinkler systems, is amended to add the following subsection: "904.11.4.2 Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application."

(21) IFC, Chapter 9, Section 904.11.6.2, Extinguishing system service, is amended to add the following: "Exception: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ."

(22) IFC, Chapter 9, Section 905.11, Existing buildings, and IFC, Chapter 46, Section 4603.5, Standpipes, are deleted.

(23) IFC, Chapter 9, Section 907.3, Where required in existing buildings and structures, is deleted, and IFC, Chapter 46, Section 4603.6, Fire alarm systems, is deleted and rewritten as follows: "An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector."

(24) IFC, Chapter 9, Section 907.9.5, Maintenance, inspection, and testing, is amended to add the following sentences at the end of the section: "Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ."

(25) IFC, Chapter 9, Section 907.10, Carbon monoxide alarms, is added as follows: "Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

901.10.21.1. If more than one carbon monoxide detector is required, they shall be interconnected as required in IFC, Chapter 9, Section 907.2.11.3.

901.10.21.2. In new construction, carbon monoxide detectors shall receive their primary power as required in IFC, Chapter 9, Section 907.2.11.4.

901.10.21.3. Upon completion of the installation, the carbon monoxide detector system will meet the requirements listed in NFPA 720, Installation of Carbon Monoxide Detection and Warning Equipment and UL2034, Standard for Single and Multiple Station Carbon Monoxide Alarms."

Section 99. Section 15A-5-205 is enacted to read:

15A-5-205. Amendments and additions to IFC related to means of egress and special processes and uses.

For IFC, Means of Egress:

(1) IFC, Chapter 10, Section 1008.1.9.6, Special locking arrangements in Group I-2, is amended as follows:

(a) The section title "Special locking arrangements in Group I-2." is rewritten to read "Special locking arrangements in Groups I-1 and I-2."

(b) On line three, after the word "Group", add the words "I-1 and".

(c) On line two and line four delete the word "delayed" and replace it with the word "controlled".

(d) Beginning on line 11, the entire sentence that begins with "A building occupant" is deleted.

(e) After existing Item 6 add Item 7 as follows: "7. The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction."

(2) In IFC, Chapter 10, Section 1008.1.9.7, Delayed egress locks, Item 7 is added after the existing Item 6 as follows: "7. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction."

(3) IFC, Chapter 10, Section 1009.4.2, Riser height and tread depth, is amended as follows:

(a) On line six of Exception 5 delete "7 inches (197mm)" and replace it with "8 inches".

(b) On line seven of Exception 5 delete "10 inches (254mm)" and replace it with "9 inches".

(4) IFC, Chapter 10, Section 1009.12, Handrails, is amended to add the following exception: "6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers."

(5) IFC, Chapter 10, Section 1013.2, Height, is amended to add the following exception: "5. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm)."

(6) IFC, Chapter 10, Section 1015.2.2, Three or more exits or exit access doorways, is amended to add the following sentence at the end of the section: "Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available."

(7) IFC, Chapter 10, Section 1024, Luminous Egress Path Markings, is deleted.

(8) IFC, Chapter 10, Section 1030.2, Reliability, is amended to add the following: On line six, after the word "fire", add the words "and building".

Section 100. Section 15A-5-206 is enacted to read:

15A-5-206. Amendments and additions to IFC related to hazardous materials, explosives, fireworks, and flammable and combustible liquids.

(1) For IFC, Explosives and Fireworks, IFC, Chapter 33, Section 3301.1.3, Fireworks, Exception 4 is amended to add the following sentence at the end of the exception: "The use of fireworks for display and retail sales is allowed as set forth in Utah Code, Title 53, Chapter 7, Utah Fire Prevention and Safety Act, Sections 53-7-220 through 53-7-225; Utah Code, Title 11, Chapter 3, County and Municipal Fireworks Act; Utah Administrative Code, R710-2; and the State Fire Code."

(2) For IFC, Flammable and Combustible Liquids:

(a) IFC, Chapter 34, Section 3401.4, Permits, is amended to add the following at the end of the section: "The owner of an underground tank that is out of service for longer than one year shall receive a Temporary Closure Notice from the Department of Environmental Quality, and a copy shall be given to the AHJ."

(b) IFC, Chapter 34, Section 3406.1, General, is amended to add the following special operation: "8. Sites approved by the AHJ".

(c) IFC, Chapter 34, Section 3406.2, Storage and dispensing of flammable and combustible liquids on farms and construction sites, is amended to add the following: On line five, after the words "borrow pits", add the words "and sites approved by the AHJ".

(3) For IFC, Liquefied Petroleum Gas:

(a) IFC, Chapter 38, Section 3801.2, Permits, is amended as follows: On line two, after the word "105.7", add "and the adopted LP Gas rules".

(b) IFC, Chapter 38, Section 3803.1, General, is deleted and rewritten as follows: "General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas rules, and the International Fuel Gas Code, except as otherwise provided in this chapter."

(c) Chapter 38, Section 3809.12, Location of storage outside of buildings, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 -- 2,500, the currently stated "5" is deleted and replaced with "10".

(d) IFC, Chapter 38, Section 3809.14, Alternative location and protection of storage, is amended as follows: Delete "20" from line three and replace it with "10".

(e) IFC, Chapter 38, Section 3810.1, Temporarily out of service, is amended as follows: On line two, after the word "discontinued", add the words "for

more than one year or longer as allowed by the AHJ,".

Section 101. Section 15A-5-207 is enacted to read:

15A-5-207. Amendments and additions to IFC related to existing buildings and referenced standards.

IFC, Chapter 47, Referenced Standards, is amended as follows:

(1) Under the heading NFPA – National Fire Protection Association, delete the existing "Standard reference number" with regard to the edition and replace it with the following:

(a) "NFPA, Standard 10, Portable Fire Extinguishers, 2010 edition";

(b) "NFPA, Standard 11, Low–, Medium– and High–expansion Foam, 2010 edition";

(c) "NFPA, Standard 12, Carbon Dioxide Extinguishing Systems, 2008 edition";

(d) "NFPA, Standard 12A, Halon 1301 Fire Extinguishing System, 2009 edition";

(e) "NFPA, Standard 13, Installation of Sprinkler Systems, 2010 edition";

(f) "NFPA, Standard 13D, Installation of Sprinkler Systems in One– and Two–family Dwellings and Manufactured Homes, 2010 edition";

(g) "NFPA, Standard 13R, Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2010 edition";

(h) "NFPA, Standard 14, Installation of Standpipe and Hose Systems, 2010 edition";

(i) "NFPA, Standard 17, Dry Chemical Extinguishing Systems, 2009 edition";

(j) "NFPA, Standard 17A, Wet Chemical Extinguishing Systems, 2009 edition";

(k) "NFPA, Standard 20, Installation of Stationary Pumps for Fire Protection, 2010 edition";

(l) "NFPA, Standard 22, Water Tanks for Private Fire Protection, 2008 edition";

(m) "NFPA, Standard 24, Installation of Private Fire Service Mains and Their Appurtenances, 2010 edition";

(n) "NFPA, Standard 72, National Fire Alarm Code, 2010 edition," all "Referenced in code section numbers" remain the same, except the exclusion of Table 508.1.5;

(o) "NFPA, Standard 92B, Smoke Management Systems in Malls, Atria and Large Spaces, 2009 edition";

(p) "NFPA, Standard 101, Life Safety Code, 2009 edition";

(q) "NFPA, Standard 110, Emergency and Standby Power Systems, 2010 edition";

(r) "NFPA 720, Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2009 edition";

(s) "NFPA, Standard 750, Water Mist Fire Protection Systems, 2010 edition"; and

(t) "NFPA, Standard 1123, Fireworks Display, 2010 edition."

(2) Under the heading UL –– Underwriters Laboratories, Inc., add the following: "UL2034, Standard for Single and Multiple Station Carbon Monoxide Alarms, 1998."

Section 102. Section 15A-5-301 is enacted to read:

Part 3. Amendments and Additions to NFPA Incorporated as Part of State Fire Code

15A-5-301. General provisions.

The amendments and additions in this part to the NFPA are adopted for application statewide.

Section 103. Section 15A-5-302 is enacted to read:

15A-5-302. Amendments and additions to NFPA related to National Fire Alarm Code.

For NFPA 72, National Fire Alarm Code:

(1) NFPA 72, Chapter 2, Section 2.2, NFPA Publications, is amended to add the following NFPA standard: "NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition."

(2) NFPA 72, Chapter 4, Section 4.3.2, System Designer, Subsection 4.3.2.2(2), is deleted and rewritten as follows: "National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel."

(3) NFPA 72, Chapter 4, Section 4.3.3, System Installer, Subsection 4.3.3(2), is deleted and rewritten as follows: "National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel."

(4) NFPA 72, Chapter 4, Section 4.4.3.7, Alarm Signal Deactivation, Subsection 4.4.3.7.2, is amended to add the following sentence: "When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building."

(5) NFPA 72, Chapter 4, Section 4.4.5, Protection of Fire Alarm System, is deleted and rewritten as follows: "Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location."

(6) In NFPA 72, Chapter 4, Section 4.4.5, a new Exception 1 is added as follows: "When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted."

(7) In NFPA 72, Chapter 6, Section 6.8.5.9, Signal Initiation -- Fire Pump, Subsection 6.8.5.9.3 is added as follows: "Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ."

(8) NFPA 72, Chapter 7, Section 7.4.1, General Requirements, Subsection 7.4.1.2, is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

(9) NFPA 72, Chapter 8, Section 8.3.4, Indication of Central Station Service, Subsection 8.3.4.7 is amended as follows: On line two, after the word "notified", insert the words "without delay".

(10) NFPA 72, Chapter 10, Section 10.2.2.5, Service Personnel Qualifications and Experience, Subsection 10.2.2.5.1, is deleted and rewritten as follows: "Service personnel shall be qualified and experienced in the inspection, testing, and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing."

Section 104. Section 15A-5-303 is enacted to read:

15A-5-303. Amendments and additions to NFPA related to manufacture, transportation, storage, and retail sales of fireworks.

(1) For purposes of this section and subject to Subsection (2), the Utah Fire Prevention Board shall adopt standards by rule for the retail sales of consumer fireworks, and in doing so, shall consider the applicable provisions of NFPA 1124, Chapter 7, Retail Sales of Consumer Fireworks.

(2) NFPA 1124 Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles:

(a) In NFPA 1124, Chapter 7, Section 7.2, Special Limits for Retail Sales of Consumer Fireworks, Subsection 7.2.8 is added as follows: "Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25% of the area of the retail sales floor or exceed 600 square feet, whichever is less."

(b) In NFPA 1124, Chapter 7, Section 7.2, Special Limits for Retail Sales of Consumer Fireworks, Subsection 7.2.9 is added as follows: "Rack storage of Class C common state approved explosives inside of buildings is prohibited."

(c) NFPA 1124, Chapter 7, Section 7.3.1, Exempt Amounts, Subsection 7.3.1.1, is deleted and rewritten as follows: "Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition."

(d) NFPA 1124, Chapter 7, Section 7.3.15.2, Height of Sales Displays, Subsection 7.3.15.2.2, is amended as follows: On line three delete "12 ft. (3.66m)" and replace it with "6 ft.".

Section 105. Section 15A-5-401 is enacted to read:

Part 4. Local Ordinances

15A-5-401. Grandfathering of local ordinances related to automatic sprinkler systems.

An ordinance adopted by a legislative body of a political subdivision that is in effect on June 30, 2010, and that imposes a requirement related to an automatic sprinkler system for a structure built in accordance with the requirements of the International Residential Code as adopted in the State Construction Code may remain in effect on or after July 1, 2010, notwithstanding that the ordinance is not authorized under Subsection 15A-5-203(2).

Section 106. Section 17-27a-513 is amended to read:

17-27a-513. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section [~~58-56-3~~] 15A-1-302, except that the manufactured home must be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any land use zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants, applicable to a single-family residence within that zone or area.

(3) A county may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

Section 107. Section 26-15-3 is amended to read:

26-15-3. Department to advise regarding the plumbing code.

(1) The department shall advise the Division of Occupational and Professional Licensing and the Uniform Building Code Commission with respect to the adoption of a state construction code under Section [~~58-56-4~~] 15A-1-204, including providing recommendations as to:

(a) a specific edition of a plumbing code issued by a nationally recognized code authority; and

(b) any amendments to a nationally recognized code.

(2) The department may enforce the plumbing code adopted under Section [~~58-56-4~~] 15A-1-204.

(3) Section 58-56-9 does not apply to health inspectors acting under this section.

Section 108. Section 26A-1-113 is amended to read:

26A-1-113. Right of entry to regulated premises by representatives for inspection.

(1) Upon presenting proper identification, authorized representatives of local health departments may enter upon the premises of properties regulated by local health departments to perform routine inspections to insure compliance with rules, standards, regulations, and ordinances as adopted by the Departments of Health and Environmental Quality, local boards of health, county or municipal governing bodies, or administered by the Division of Occupational and Professional Licensing under [~~Section 58-56-4~~] Title 15A, Chapter 1, Part 2, State Construction Code Administration Act.

(2) Section 58-56-9 does not apply to health inspectors acting under this section.

(3) This section does not authorize local health departments to inspect private dwellings.

Section 109. Section 26A-1-114 is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the plumbing code administered by the Division of Occupational and Professional Licensing under [~~Section 58-56-4~~] Title 15A, Chapter 1, Part 2, State Construction Code Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law which:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law which are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards;

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense;

(o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

(p) provide public health assistance in response to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of convicted sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan which:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance; and

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

(6) Nothing in this part may be construed to authorize a local health department to enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon monoxide detector in a residential dwelling against anyone other than the occupant of the dwelling.

Section 110. Section 38-11-102 is amended to read:

38-11-102. Definitions.

(1) "Board" means the Residence Lien Recovery Fund Advisory Board established under Section 38-11-104.

(2) "Certificate of compliance" means an order issued by the director to the owner finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a) and (4)(b) and is entitled to protection under Section 38-11-107.

(3) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(4) "Department" means the Department of Commerce.

(5) "Director" means the director of the Division of Occupational and Professional Licensing.

(6) "Division" means the Division of Occupational and Professional Licensing.

(7) "Duplex" means a single building having two separate living units.

(8) "Encumbered fund balance" means the aggregate amount of outstanding claims against the fund. The remainder of monies in the fund are unencumbered funds.

(9) "Executive director" means the executive director of the Department of Commerce.

(10) "Factory built housing" is as defined in Section [~~58-56-3~~] 15A-1-302.

(11) "Factory built housing retailer" means a person that sells factory built housing to consumers.

(12) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

(13) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

(14) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, Architects Licensing Act, 22, Professional Engineers and Land Surveyors Licensing Act, 53, Landscape Architects Licensing Act, and 55, Utah Construction Trades Licensing Act.

(15) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.

(16) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied residence.

(17) "Owner" means a person who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property owned by that person;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) buys a residence from a real estate developer after completion of the construction on the owner-occupied residence.

(18) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence.

(19) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays necessary fees or assessments required under this chapter; and

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks recovery from the fund as a licensed contractor; or

(ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.

(20) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:

(i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;

(iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

(v) design and specification services of mechanical or other systems;

(vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

(vii) providing materials, supplies, components, or similar products;

(viii) renting equipment or materials;

(ix) labor at the site of the construction on the owner-occupied residence; and

(x) site preparation, set up, and installation of factory built housing.

(b) "Qualified services" do not include the construction of factory built housing in the factory.

(21) "Real estate developer" means a person having an ownership interest in real property who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a residence that is offered for sale to the public; or

(b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public.

(22) (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:

(i) a primary or secondary detached single-family dwelling; or

(ii) a multifamily dwelling up to and including duplexes.

(b) "Residence" includes factory built housing.

(23) "Subsequent owner" means a person who purchases a residence from an owner within 180 days from the date the construction on the residence is completed.

Section 111. Section 53-7-102 is amended to read:

53-7-102. Definitions.

As used in this chapter:

(1) "Board" means the Utah Fire Prevention Board created in Section 53-7-203, except as provided in Part 3, Liquefied Petroleum Gas Act.

(2) "Director" means the state fire marshal appointed in accordance with Section 53-7-103.

(3) "Division" means the State Fire Marshal Division created in Section 53-7-103.

(4) "Fire officer" means:

(a) the state fire marshal;

(b) the state fire marshal's deputies or salaried assistants;

(c) the fire chief or fire marshal of any county, city, or town fire department;

(d) the fire officer of any fire district;

(e) the fire officer of any special service district organized for fire protection purposes; and

(f) authorized personnel of any of the persons specified in Subsections (4)(a) through (e).

[~~(5) "Legislative action" includes legislation that:~~]

[~~(a) adopts a state fire code;~~]

[~~(b) amends a state fire code; or~~]

[~~(c) repeals one or more provisions of a state fire code.~~]

[~~(6)~~] (5) "State fire code" means the code adopted under Section [~~53-7-106~~] 15A-1-403.

[~~(7)~~] (6) "State fire marshal" means the fire marshal appointed director by the commissioner under Section 53-7-103.

Section 112. Section 53-7-204 is amended to read:

53-7-204. Duties of Utah Fire Prevention Board -- Unified Code Analysis Council -- Local administrative duties.

(1) The board shall:

(a) administer the state fire code as the standard in the state;

(b) subject to the state fire code, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) establishing standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the elderly, an assisted living facility, a children's home or day care center, or any building or structure used for a similar purpose; or

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(ii) establishing safety and other requirements for placement and discharge of display fireworks on the basis of:

(A) the state fire code; and

(B) relevant publications of the National Fire Protection Association;

(iii) establishing safety standards for retail storage, handling, and sale of class C common state approved explosives;

(iv) defining methods to establish proof of competence to place and discharge display fireworks, special effects fireworks, and flame effects;

(v) deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies;

(vi) implementing Section [~~53-7-106~~] 15A-1-403;

(vii) setting guidelines for use of funding;

(viii) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification; and

(ix) establishing ongoing training standards for hazardous materials emergency response agencies;

(c) recommend to the commissioner a state fire marshal;

(d) develop policies under which the state fire marshal and the state fire marshal's authorized representatives will perform;

(e) provide for the employment of field assistants and other salaried personnel as required;

(f) prescribe the duties of the state fire marshal and the state fire marshal's authorized representatives;

(g) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents;

(h) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state;

(i) establish a fire academy in accordance with Section 53-7-204.2;

(j) coordinate the efforts of all people engaged in fire suppression in the state;

(k) work aggressively with the local political subdivisions to reduce fire losses;

(l) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property;

(m) establish a certification program for persons who inspect and test automatic fire sprinkler systems;

(n) establish a certification program for persons who inspect and test fire alarm systems;

(o) establish a certification for persons who provide response services regarding hazardous materials emergencies;

(p) in accordance with Section [~~53-7-106~~] 15A-1-403, report to the Business and Labor Interim Committee; and

(q) jointly create the Unified Code Analysis Council with the Uniform Building Code Commission in accordance with [~~Subsection 58-56-5(12)~~] Section 15A-1-203.

(2) The board may incorporate in its rules by reference, in whole or in part:

(a) the state fire code; or

(b) subject to the state fire code, a nationally recognized and readily available standard pertaining to the protection of life and property from fire, explosion, or panic.

(3) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with the state fire code; and

(c) subject to the state fire code and the other provisions of this chapter, establishing, modifying, or deleting fire flow and water supply requirements.

Section 113. Section 57-23-4 is amended to read:

57-23-4. Exclusions.

This chapter does not apply to:

(1) an interest in real estate regulated under Title 57, Chapter 19, Timeshare and Camp Resort Act;

(2) an offering for an interest in real estate which is regulated under:

(a) Title 61, Chapter 1, Utah Uniform Securities Act;

(b) the securities laws of any state; or

(c) federal securities laws; or

(3) a sale of manufactured housing licensed under Title 58, Chapter 56, [~~Utah Uniform Building Standards Act~~] Building Inspector and Factory Built Housing Licensing Act, unless the sale is made in conjunction with an offering or sale of a cooperative interest under this chapter.

Section 114. Section 58-3a-102 is amended to read:

58-3a-102. Definitions.

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

(1) "Architect" means a person licensed under this chapter as an architect.

(2) "Board" means the Architects Licensing Board created in Section 58-3a-201.

(3) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the [~~codes adopted under Title 58, Chapter 56, Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(4) "Complete construction plans" means a final set of plans and specifications for a building that normally includes:

(a) floor plans;

(b) elevations;

(c) site plans;

(d) foundation, structural, and framing detail;

(e) electrical, mechanical, and plumbing design;

(f) information required by the energy code;

(g) specifications and related calculations as appropriate; and

(h) all other documents required to obtain a building permit.

(5) "Fund" means the Architects Education and Enforcement Fund created in Section 58-3a-103.

(6) (a) "Practice of architecture" means rendering or offering to render the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings, and the space within and surrounding such buildings:

(i) planning;

(ii) facility programming;

(iii) preliminary studies;

(iv) preparation of designs, drawings, and specifications;

(v) preparation of technical submissions and coordination of any element of technical submissions prepared by others including, as appropriate and without limitation, professional engineers, and landscape architects; and

(vi) administration of construction contracts.

(b) "Practice of architecture" does not include the practice of professional engineering as defined in Section 58-22-102, but a licensed architect may perform such professional engineering work as is incidental to the practice of architecture.

(7) "Principal" means a licensed architect having responsible charge of an organization's architectural practice.

(8) "Supervision of an employee, subordinate, associate, or drafter of an architect" means that a licensed architect is responsible for and personally reviews, corrects when necessary, and approves work performed by any employee, subordinate,

associate, or drafter under the direction of the architect, and may be further defined by rule by the division in collaboration with the board.

(9) "Unlawful conduct" as defined in Section 58-1-501 is further defined in Section 58-3a-501.

(10) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board.

Section 115. Section 58-3a-602 is amended to read:

58-3a-602. Plans and specifications to be sealed.

(1) Any final plan and specification of a building erected in this state shall bear the seal of an architect licensed under this chapter, except as provided in Section 58-3a-304, in Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, and by the [~~codes adopted under Title 58, Chapter 56, Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) Any final plan and specification of a building prepared by or under the supervision of the licensed architect shall bear the seal of the architect when submitted to a client, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-3a-304.

Section 116. Section 58-22-102 is amended to read:

58-22-102. Definitions.

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

(1) "Board" means the Professional Engineers and Professional Land Surveyors Licensing Board created in Section 58-22-201.

(2) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the [~~codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(3) "Complete construction plans" means a final set of plans, specifications, and reports for a building or structure that normally includes:

(a) floor plans;

(b) elevations;

(c) site plans;

(d) foundation, structural, and framing detail;

(e) electrical, mechanical, and plumbing design;

(f) information required by the energy code;

(g) specifications and related calculations as appropriate; and

(h) all other documents required to obtain a building permit.

(4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology.

(5) "Fund" means the Professional Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.

(6) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(7) "Principal" means a licensed professional engineer, professional structural engineer, or professional land surveyor having responsible charge of an organization's professional engineering, professional structural engineering, or professional land surveying practice.

(8) "Professional engineer" means a person licensed under this chapter as a professional engineer.

(9) (a) "Professional engineering or the practice of engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the service or creative work as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, facility programming, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications; any of which embraces these services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, and including other professional services as may be necessary to the planning, progress, and completion of any engineering services.

(b) The practice of professional engineering does not include the practice of architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform architecture work as is incidental to the practice of engineering.

(10) "Professional engineering intern" means a person who:

(a) has completed the education requirements to become a professional engineer;

(b) has passed the fundamentals of engineering examination; and

(c) is engaged in obtaining the four years of qualifying experience for licensure under the direct supervision of a licensed professional engineer.

(11) "Professional land surveying or the practice of land surveying" means a service or work, the

adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.

(12) "Professional land surveyor" means an individual licensed under this chapter as a professional land surveyor.

(13) "Professional structural engineer" means a person licensed under this chapter as a professional structural engineer.

(14) "Professional structural engineering or the practice of structural engineering" means a service or creative work in the following areas, and may be further defined by rule by the division in collaboration with the board:

(a) providing structural engineering services for significant structures including:

(i) buildings and other structures representing a substantial hazard to human life, which include:

(A) buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300;

(B) buildings and other structures with elementary school, secondary school, or day care facilities with an occupant load greater than 250;

(C) buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;

(D) health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities;

(E) jails and detention facilities with a gross area greater than 3,000 square feet; or

(F) an occupancy with an occupant load greater than 5,000;

(ii) buildings and other structures designated as essential facilities, including:

(A) hospitals and other health care facilities having surgery or emergency treatment facilities with a gross area greater than 3,000 square feet;

(B) fire, rescue, and police stations and emergency vehicle garages with a mean height greater than 24 feet or a gross area greater than 5,000 square feet;

(C) designated earthquake, hurricane, or other emergency shelters with a gross area greater than 3,000 square feet;

(D) designated emergency preparedness, communication, and operation centers and other buildings required for emergency response with a mean height more than 24 feet or a gross area greater than 5,000 square feet;

(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater then 3,000 square feet;

(F) structures with a mean height more than 24 feet or a gross area greater than 5,000 square feet containing highly toxic materials as defined by the division by rule, where the quantity of the material exceeds the maximum allowable quantities set by the division by rule; and

(G) aviation control towers, air traffic control centers, and emergency aircraft hangars at commercial service and cargo air services airports as defined by the Federal Aviation Administration with a mean height greater than 35 feet or a gross area greater than 20,000 square feet; and

(iii) buildings and other structures requiring special consideration, including:

(A) structures or buildings that are:

(I) normally occupied by human beings; and

(II) five stories or more in height; or

(III) that have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; or

(B) all buildings over 200,000 aggregate gross square feet in area; and

(b) includes the definition of professional engineering or the practice of professional engineering as provided in Subsection (9).

(15) "Structure" means that which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in a definite manner, and as otherwise governed by the [~~codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(16) "Supervision of an employee, subordinate, associate, or drafter of a licensee" means that a licensed professional engineer, professional structural engineer, or professional land surveyor is responsible for and personally reviews, corrects when necessary, and approves work performed by an employee, subordinate, associate, or drafter under the direction of the licensee, and may be further defined by rule by the division in collaboration with the board.

(17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(18) "Unlawful conduct" is defined in Sections 58-1-501 and 58-22-501.

(19) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board.

Section 117. Section 58-22-602 is amended to read:

58-22-602. Plans, specifications, reports, maps, sketches, surveys, drawings, documents, and plats to be sealed.

(1) Any final plan, specification, and report of a building or structure erected in this state shall bear the seal of a professional engineer or professional structural engineer licensed under this chapter, except as provided in Section 58-22-305, in Title 58, Chapter 3a, Architect Licensing Act, and by the [~~codes adopted under Title 58, Chapter 56, Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) Any final plan, specification, and report prepared by, or under the supervision of, the professional engineer or professional structural engineer shall bear the seal of the professional engineer or professional structural engineer when submitted to a client, when filed with public authorities, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-22-305.

(3) Any final plan, map, sketch, survey, drawing, document, plat, and report shall bear the seal of the professional land surveyor licensed under this chapter when submitted to a client or when filed with public authorities.

Section 118. Section 58-53-602 is amended to read:

58-53-602. Site plans to be sealed.

(1) Any site plan prepared in this state shall bear the seal of a landscape architect licensed under this chapter, except as provided in Section 58-53-304, in Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, in Title 58, Chapter 3a, Architects Licensing Act, or by the [~~codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(2) Any final site plan prepared by or under the supervision of the licensed landscape architect shall bear the seal of the landscape architect when submitted to a client, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-53-304.

Section 119. Section 58-55-102 is amended to read:

58-55-102. Definitions.

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

(1) (a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system, except as provided in Subsection (1)(b).

(b) "Alarm business or company" does not include:

(i) a person engaged in the manufacture and sale of alarm systems when that person is not engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems, and the manufacture or sale occurs only at a place of business established by the person engaged in the manufacture or sale and does not involve site visits at the place or intended place of installation of an alarm system; or

(ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.

(2) "Alarm company agent" means any individual employed within this state by a person engaged in the alarm business.

(3) "Alarm system" means equipment and devices assembled for the purpose of:

(a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or

(b) signaling a robbery or attempted robbery on protected premises.

(4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under the immediate supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.

(5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under the immediate supervision of a master plumber, residential master plumber, journeyman plumber, or a residential journeyman plumber.

(6) "Approved continuing education" means instruction provided through courses under a program established under Subsection 58-55-302.5(2).

(7) "Board" means the Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

(8) "Combustion system" means an assembly consisting of:

(a) piping and components with a means for conveying, either continuously or intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the appliance;

(b) the electric control and combustion air supply and venting systems, including air ducts; and

(c) components intended to achieve control of quantity, flow, and pressure.

(9) "Commission" means the Construction Services Commission created under Section 58-55-103.

(10) "Construction trade" means any trade or occupation involving:

(a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property; and

(ii) constructing, remodeling, or repairing a manufactured home or mobile home as defined in Section [~~58-56-3~~] 15A-1-302; or

(b) installation or repair of a residential or commercial natural gas appliance or combustion system.

(11) "Construction trades instructor" means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.

(12) (a) "Contractor" means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(i) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

(ii) any person who represents himself to be a contractor by advertising or any other means;

(iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(iv) any person engaged in any construction trade for which licensure is required under this chapter; or

(v) a construction manager who performs management and counseling services on a construction project for a fee.

(b) "Contractor" does not include an alarm company or alarm company agent.

(13) (a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(b) "Electrical trade" does not include:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

(iii) work commonly done by unskilled labor on any installations under the exclusive control of electrical utilities.

(c) For purposes of Subsection (13)(b):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted by this Subsection (13)(c).

(14) "Elevator" has the same meaning as defined in Section 34A-7-202, except that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.

(15) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under this chapter that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator.

(16) "Elevator mechanic" means an individual who is licensed under this chapter as an elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

(17) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

(18) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(19) (a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare.

(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(20) "Gas appliance" means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

(21) (a) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, and

manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(b) The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(22) (a) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works.

(b) A general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(23) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person:

(a) as the division specifies in rule;

(b) by, as applicable, a qualified electrician or plumber;

(c) as part of a planned program of training; and

(d) to ensure that the end result complies with applicable standards.

(24) "Individual" means a natural person.

(25) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(26) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(27) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

(28) "Master plumber" means a person licensed under this chapter as a master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade.

(29) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(30) (a) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for:

(i) delivery of the water supply;

(ii) discharge of liquid and water carried waste; or

(iii) the building drainage system within the walls of the building.

(b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes, fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

(31) (a) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work.

(b) On-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

(32) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(33) "Residential building," as it relates to the license classification of residential journeyman

plumber and residential master plumber, means a single or multiple family dwelling of up to four units.

(34) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(35) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

(36) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

(37) "Residential master plumber" means a person licensed under this chapter as a residential master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade as limited to the plumbing of residential buildings.

(38) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

(39) (a) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill, the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare.

(b) A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

(40) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

(41) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-55-502 and as may be further defined by rule.

(42) "Wages" means amounts due to an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

Section 120. Section 58-55-305 is amended to read:

58-55-305. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades, subject to the stated circumstances and limitations, without being licensed under this chapter:

(a) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of the person's trust, office, or employment;

(b) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, as defined in Section 73-3-25, hauling to and from construction sites, and lumbering;

(c) public utilities operating under the rules of the Public Service Commission on work incidental to their own business;

(d) sole owners of property engaged in building:

(i) no more than one residential structure per year and no more than three residential structures per five years on their property for their own noncommercial, nonpublic use; except, a person other than the property owner or individuals described in Subsection (1)(e), who engages in building the structure must be licensed under this chapter if the person is otherwise required to be licensed under this chapter; or

(ii) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;

(e) (i) a person engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:

(A) works without compensation other than token compensation that is not considered salary or wages; and

(B) works under the direction of the property owner who engages in building the structure; and

(ii) as used in this Subsection (1)(e), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person exempted from licensure under this Subsection (1)(e), that is:

(A) minimal in value when compared with the fair market value of the services provided by the person;

(B) not related to the fair market value of the services provided by the person; and

(C) is incidental to the providing of services by the person including paying for or providing meals or

refreshment while services are being provided, or paying reasonable transportation costs incurred by the person in travel to the site of construction;

(f) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(g) a contractor submitting a bid on a federal aid highway project, if, before undertaking construction under that bid, the contractor is licensed under this chapter;

(h) (i) a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than $3,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; and

(ii) notwithstanding Subsection (1)(h)(i) and except as otherwise provided in this section:

(A) work in the plumbing and electrical trades on a Subsection (1)(h)(i) project within any six month period of time:

(I) must be performed by a licensed electrical or plumbing contractor, if the project involves an electrical or plumbing system; and

(II) may be performed by a licensed journeyman electrician or plumber or an individual referred to in Subsection (1)(h)(ii)(A)(I), if the project involves a component of the system such as a faucet, toilet, fixture, device, outlet, or electrical switch;

(B) installation, repair, or replacement of a residential or commercial gas appliance or a combustion system on a Subsection (1)(h)(i) project must be performed by a person who has received certification under Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or 58-55-308(3);

(C) installation, repair, or replacement of water-based fire protection systems on a Subsection (1)(h)(i) project must be performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;

(D) work as an alarm business or company or as an alarm company agent shall be performed by a licensed alarm business or company or a licensed alarm company agent, except as otherwise provided in this chapter;

(E) installation, repair, or replacement of an alarm system on a Subsection (1)(h)(i) project must be performed by a licensed alarm business or company or a licensed alarm company agent;

(F) installation, repair, or replacement of a heating, ventilation, or air conditioning system (HVAC) on a Subsection (1)(h)(i) project must be performed by an HVAC contractor licensed by the division;

(G) installation, repair, or replacement of a radon mitigation system or a soil depressurization system must be performed by a licensed contractor; and

(H) if the total value of the project is greater than $1,000, the person shall file with the division a one-time affirmation, subject to periodic reaffirmation as established by division rule, that the person has:

(I) public liability insurance in coverage amounts and form established by division rule; and

(II) if applicable, workers compensation insurance which would cover an employee of the person if that employee worked on the construction project;

(i) a person practicing a specialty contractor classification or construction trade which the director does not classify by administrative rule as significantly impacting the public's health, safety, and welfare;

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

(k) (i) a person engaged in minor plumbing work that is incidental, as defined by the division by rule, to the replacement or repair of a fixture or an appliance in a residential or small commercial building, or structure used for agricultural use, as defined in Section [~~58-56-3~~] 15A-1-202, provided that no modification is made to:

(A) existing culinary water, soil, waste, or vent piping; or

(B) a gas appliance or combustion system; and

(ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (1)(k)(i);

(l) a person who ordinarily would be subject to the plumber licensure requirements under this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:

(i) meets the appropriate state construction codes or local plumbing standards; and

(ii) is installed or repaired under the direction of a person authorized to do the work under an appropriate specialty contractor license;

(m) a person who ordinarily would be subject to the electrician licensure requirements under this chapter when employed by:

(i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

(n) a person involved in minor electrical work incidental to a mechanical or service installation;

(o) a student participating in construction trade education and training programs approved by the commission with the concurrence of the director under the condition that:

(i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and

(ii) a licensed contractor obtains the necessary building permits;

(p) a delivery person when replacing any of the following existing equipment with a new gas appliance, provided there is an existing gas shutoff valve at the appliance:

(i) gas range;

(ii) gas dryer;

(iii) outdoor gas barbeque; or

(iv) outdoor gas patio heater;

(q) a person performing maintenance on an elevator as defined in Subsection 58-55-102(14), if the maintenance is not related to the operating integrity of the elevator; and

(r) an apprentice or helper of an elevator mechanic licensed under this chapter when working under the general direction of the licensed elevator mechanic.

(2) A compliance agency as defined in Section [~~58-56-3~~] 15A-1-202 that issues a building permit to a person requesting a permit as a sole owner of property referred to in Subsection (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of the permit.

Section 121. Section 58-56-1 is amended to read:

58-56-1. Short title.

This chapter is known as the[~~ "Utah Uniform Building Standards Act."~~] "Building Inspector and Factory Built Housing Licensing Act."

Section 122. Section 58-56-3 is amended to read:

58-56-3. Definitions.

In addition to the definitions in Section 58-1-102, [~~as used in this chapter:~~] definitions in the following sections apply to this chapter:

(1) Section 15A-1-102;

(2) Section 15A-1-202; and

(3) Section 15A-1-302.

[~~(1) "Agricultural use" means a use that relates to the tilling of soil and raising of crops, or keeping or raising domestic animals.~~]

[~~(2) (a) "Approved code" means a code, including the standards and specifications contained in the code, approved by the division under Section 58-56-4 for use by a compliance agency.~~]

[~~(b) "Approved code" does not include a state construction code.~~]

[~~(3) "Building" means a structure used or intended for supporting or sheltering any use or occupancy and any improvements attached to it.~~]

[~~(4) "Code" means:~~]

[~~(a) a state construction code; or~~]

[~~(b) an approved code.~~]

[~~(5) "Commission" means the Uniform Building Code Commission created under this chapter.~~]

[~~(6) "Compliance agency" means:~~]

[~~(a) an agency of the state or any of its political subdivisions which issues permits for construction regulated under the codes;~~]

[~~(b) any other agency of the state or its political subdivisions specifically empowered to enforce compliance with the codes; or~~]

[~~(c) any other state agency which chooses to enforce codes adopted under this chapter by authority given the agency under a title other than Title 58, Occupations and Professions.~~]

[~~(7) "Construction code" means standards and specifications published by a nationally recognized code authority for use in circumstances described in Subsection 58-56-4(1), including:~~]

[~~(a) a building code;~~]

[~~(b) an electrical code;~~]

[~~(c) a residential one and two family dwelling code;~~]

[~~(d) a plumbing code;~~]

[~~(e) a mechanical code;~~]

[~~(f) a fuel gas code;~~]

[~~(g) an energy conservation code; and~~]

[~~(h) a manufactured housing installation standard code.~~]

[~~(8) "Factory built housing" means manufactured homes or mobile homes.~~]

[~~(9) (a) "Factory built housing set-up contractor" means an individual licensed by the division to set up or install factory built housing on a temporary or permanent basis.~~]

[~~(b) The scope of the work included under the license includes the placement or securing, or both placement and securing, of the factory built housing on a permanent or temporary foundation, securing the units together if required, and connection of the utilities to the factory built housing unit, but does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the factory built housing unit.~~]

[~~(c) If a dealer is not licensed as a factory built housing set-up contractor, that individual must~~

~~subcontract the connection services to individuals who are licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.~~]

[~~(10) "HUD code" means the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. Sec. 5401 et seq.~~]

[~~(11) "Legislative action" includes legislation that:~~]

[~~(a) adopts a new state construction code;~~]

[~~(b) amends a state construction code; or~~]

[~~(c) repeals one or more provisions of a state construction code.~~]

[~~(12) "Local regulator" means a political subdivision of the state that is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes.~~]

[~~(13) (a) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the HUD Code, in one or more sections, which:~~]

[~~(i) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet; and~~]

[~~(ii) is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.~~]

[~~(b) Manufactured homes constructed on or after June 15, 1976, shall be identifiable by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.~~]

[~~(14) "Mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code which existed prior to the HUD Code.~~]

[~~(15) "Modular unit" means a structure built from sections which are manufactured in accordance with the state construction code adopted pursuant to Section 58-56-4 and transported to a building site, the purpose of which is for human habitation, occupancy, or use.~~]

[~~(16) "Not for human occupancy" means use of a structure for purposes other than protection or comfort of human beings, but allows people to enter the structure for:~~]

[~~(a) maintenance and repair; and~~]

[~~(b) the care of livestock, crops, or equipment intended for agricultural use which are kept there.~~]

[~~(17) "Opinion" means a written, nonbinding, and advisory statement issued by the commission concerning an interpretation of the meaning of the codes or the application of the codes in a specific circumstance issued in response to a specific request by a party to the issue.~~]

[~~(18) "State construction code" means a construction code adopted by the Legislature in accordance with Section 58-56-4.~~]

[~~(19) "State regulator" means an agency of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.~~]

Section 123. Section 58-56-9 is amended to read:

58-56-9. Qualifications of inspectors -- Contract for inspection services.

(1) An inspector employed by a local regulator, state regulator, or compliance agency to enforce the codes [~~adopted or approved pursuant to this chapter~~] shall:

(a) (i) meet minimum qualifications as established by the division in collaboration with the commission;

(ii) be certified by a nationally recognized organization which promulgates construction codes [~~adopted under this chapter~~]; or

(iii) pass an examination developed by the division in collaboration with the commission;

(b) be currently licensed by the division as meeting those minimum qualifications; and

(c) be subject to revocation or suspension of the inspector's license or being placed on probation if found guilty of unlawful or unprofessional conduct.

(2) A local regulator, state regulator, or compliance agency may contract for the services of a licensed inspector not regularly employed by the regulator or agency.

[~~(3) The division shall use the money received under Subsection (4) to provide education:~~]

[~~(a) regarding the codes and code amendments that under Section 58-56-4 are adopted, approved, or being considered for adoption or approval; and~~]

[~~(b) to:~~]

[~~(i) building inspectors; and~~]

[~~(ii) individuals engaged in construction-related trades or professions.~~]

[~~(4) (a) A compliance agency shall:~~]

[~~(i) charge a 1% surcharge on a building permit it issues; and~~]

[~~(ii) transmit 80% of the amount collected to the division to be used by the division to fulfill the requirements of Subsection (3).~~]

[~~(b) The surcharge shall be deposited as a dedicated credit.~~]

Section 124. Section 58-56-15.1 is enacted to read:

58-56-15.1. Factory built housing set-up contractor license.

(1) The scope of the work included under a factory built housing set-up contractor license includes:

(a) the placement or securing, or both placement and securing, of the factory built housing on a permanent or temporary foundation;

(b) securing units together, if required; and

(c) connection of the utilities to a factory built housing unit.

(2) The scope of work included under a factory built housing set-up contractor license does not include:

(a) site preparation;

(b) construction of a permanent foundation; and

(c) construction of utility services to the near proximity of the factory built housing unit.

(3) If a dealer is not licensed as a factory built housing set-up contractor, that individual must subcontract the connection services to an individual who is licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Section 125. Section 58-56-17.5 is amended to read:

58-56-17.5. Factory Built Housing Fees Restricted Account.

(1) There is created within the General Fund a restricted account known as "Factory Built Housing Fees Account."

(2) (a) The restricted account shall be funded from the fees the dealer collects and remits to the division for each factory built home the dealer sells as provided in Subsection 58-56-17(1).

(b) The division shall deposit all money collected under Subsection 58-56-17(1) in the restricted account.

(c) The restricted account shall be used to pay for education and enforcement of this chapter and Title 15A, Chapter 1, Part 3, Factory Built Housing and Modular Units Administration Act, including investigations and administrative actions and the funding of additional employees to the amount of the legislative appropriation.

(d) The restricted account may accrue interest which shall be deposited into the restricted account.

Section 126. Section 59-12-102 is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the Federal Communications Commission.

(2) (a) "900 service" means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber's:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) "900 service" does not include a charge for:

(i) a collection service a seller of a telecommunications service provides to a subscriber; or

(ii) the following a subscriber sells to the subscriber's customer:

(A) a product; or

(B) a service.

(3) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.

(5) "Agreement combined tax rate" means the sum of the tax rates:

(a) listed under Subsection (6); and

(b) that are imposed within a local taxing jurisdiction.

(6) "Agreement sales and use tax" means a tax imposed under:

(a) Subsection 59-12-103(2)(a)(i)(A);

(b) Subsection 59-12-103(2)(b)(i);

(c) Subsection 59-12-103(2)(c)(i);

(d) Subsection 59-12-103(2)(d)(i)(A)(I);

(e) Section 59-12-204;

(f) Section 59-12-401;

(g) Section 59-12-402;

(h) Section 59-12-703;

(i) Section 59-12-802;

(j) Section 59-12-804;

(k) Section 59-12-1102;

(l) Section 59-12-1302;

(m) Section 59-12-1402;

(n) Section 59-12-1802;

(o) Section 59-12-2003;

(p) Section 59-12-2103;

(q) Section 59-12-2213;

(r) Section 59-12-2214;

(s) Section 59-12-2215;

(t) Section 59-12-2216;

(u) Section 59-12-2217; or

(v) Section 59-12-2218.

(7) "Aircraft" is as defined in Section 72-10-102.

(8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

(a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined in Subsection 59-12-107(1)(f) of an airline; and

(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:

(i) check, diagnose, overhaul, and repair:

(A) an onboard system of a fixed wing turbine powered aircraft; and

(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

(A) an inspection;

(B) a repair, including a structural repair or modification;

(C) changing landing gear; and

(D) addressing issues related to an aging fixed wing turbine powered aircraft;

(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(9) "Alcoholic beverage" means a beverage that:

(a) is suitable for human consumption; and

(b) contains .5% or more alcohol by volume.

(10) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

(b) "Ancillary service" includes:

(i) a conference bridging service;

(ii) a detailed communications billing service;

(iii) directory assistance;

(iv) a vertical service; or

(v) a voice mail service.

(11) "Area agency on aging" is as defined in Section 62A-3-101.

(12) "Assisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by an individual:

(a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and

(b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

(13) "Assisted cleaning or washing of tangible personal property" means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

(a) who is not the purchaser of the cleaning or washing of the tangible personal property; and

(b) at the direction of the seller of the cleaning or washing of the tangible personal property.

(14) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Surface Transportation Board.

(15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the following that is used as the primary source of energy to produce fuel or electricity:

(i) material from a plant or tree; or

(ii) other organic matter that is available on a renewable basis, including:

(A) slash and brush from forests and woodlands;

(B) animal waste;

(C) methane produced:

(I) at landfills; or

(II) as a byproduct of the treatment of wastewater residuals;

(D) aquatic plants; and

(E) agricultural products.

(b) "Biomass energy" does not include:

(i) black liquor;

(ii) treated woods; or

(iii) biomass from municipal solid waste other than methane produced:

(A) at landfills; or

(B) as a byproduct of the treatment of wastewater residuals.

(16) (a) "Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

(i) distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) "Bundled transaction" does not include:

(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

(ii) the sale of real property;

(iii) the sale of services to real property;

(iv) the retail sale of tangible personal property and a service if:

(A) the tangible personal property:

(I) is essential to the use of the service; and

(II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller's purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller's sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

(B) subject to Subsection (16)(f):

(I) the seller's purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price of that retail sale; or

(II) the seller's sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total sales price of that retail sale.

(c) (i) For purposes of Subsection (16)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

(I) accompanies the sale of the tangible personal property, product, or service; and

(II) is incidental or immaterial to the sale of the tangible personal property, product, or service;

(B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or

(C) an item of tangible personal property, a product, or a service included in the definition of "purchase price."

(ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection (16)(a)(ii), property sold for one nonitemized price does not

include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

(A) a binding sales document; or

(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (16)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

(e) (i) For purposes of Subsection (16)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

(A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or

(B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection (16)(b)(vi), a seller:

(A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection (16)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection (16)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

(17) "Certified automated system" means software certified by the governing board of the agreement that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the agreement;

(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (17)(a)(i).

(18) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement; and

(b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(19) (a) Subject to Subsection (19)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(20) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (48) or residential use under Subsection (94).

(22) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (22)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(23) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a

majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(24) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(25) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(26) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" includes providing a telephone number as part of the ancillary service described in Subsection (26)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (26)(a).

(27) "Construction materials" means any tangible personal property that will be converted into real property.

(28) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(29) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (29)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(30) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(31) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (31)(b)(i) through (v);

(c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in a form described in Subsections (31)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(32) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

(33) "Directory assistance" means an ancillary service of providing:

(a) address information; or

(b) telephone number information.

(34) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

(i) cannot withstand repeated use; and

(ii) are purchased by, for, or on behalf of a person other than:

(A) a health care facility as defined in Section 26-21-2;

(B) a health care provider as defined in Section 78B-3-403;

(C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or

(D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

(b) "Disposable home medical equipment or supplies" does not include:

(i) a drug;

(ii) durable medical equipment;

(iii) a hearing aid;

(iv) a hearing aid accessory;

(v) mobility enhancing equipment; or

(vi) tangible personal property used to correct impaired vision, including:

(A) eyeglasses; or

(B) contact lenses.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.

(35) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

(i) recognized in:

(A) the official United States Pharmacopoeia;

(B) the official Homeopathic Pharmacopoeia of the United States;

(C) the official National Formulary; or

(D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);

(ii) intended for use in the:

(A) diagnosis of disease;

(B) cure of disease;

(C) mitigation of disease;

(D) treatment of disease; or

(E) prevention of disease; or

(iii) intended to affect:

(A) the structure of the body; or

(B) any function of the body.

(b) "Drug" does not include:

(i) food and food ingredients;

(ii) a dietary supplement;

(iii) an alcoholic beverage; or

(iv) a prosthetic device.

(36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means equipment that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection (36)(a).

(c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include mobility enhancing equipment.

(37) "Electronic" means:

(a) relating to technology; and

(b) having:

(i) electrical capabilities;

(ii) digital capabilities;

(iii) magnetic capabilities;

(iv) wireless capabilities;

(v) optical capabilities;

(vi) electromagnetic capabilities; or

(vii) capabilities similar to Subsections (37)(b)(i) through (vi).

(38) "Employee" is as defined in Section 59-10-401.

(39) "Fixed guideway" means a public transit facility that uses and occupies:

(a) rail for the use of public transit; or

(b) a separate right-of-way for the use of public transit.

(40) "Fixed wing turbine powered aircraft" means an aircraft that:

(a) is powered by turbine engines;

(b) operates on jet fuel; and

(c) has wings that are permanently attached to the fuselage of the aircraft.

(41) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(42) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

(A) liquid form;

(B) concentrated form;

(C) solid form;

(D) frozen form;

(E) dried form; or

(F) dehydrated form; and

(ii) that are:

(A) sold for:

(I) ingestion by humans; or

(II) chewing by humans; and

(B) consumed for the substance's:

(I) taste; or

(II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).

(c) "Food and food ingredients" does not include:

(i) an alcoholic beverage;

(ii) tobacco; or

(iii) prepared food.

(43) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(44) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

(45) "Governing board of the agreement" means the governing board of the agreement that is:

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

(46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

(i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;

(ii) the judicial branch of the state, including the courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

(iv) the National Guard;

(v) an independent entity as defined in Section 63E-1-102; or

(vi) a political subdivision as defined in Section 17B-1-102.

(b) "Governmental entity" does not include the state systems of public and higher education, including:

(i) a college campus of the Utah College of Applied Technology;

(ii) a school;

(iii) the State Board of Education;

(iv) the State Board of Regents; or

(v) a state institution of higher education as defined in Section 53B-3-102.

(47) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

(48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (48)(d)(i) would otherwise be made with nonrecycled materials; or

(e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a cogeneration facility as defined in Section 54-2-1.

(49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge for installing:

(i) tangible personal property; or

(ii) a product transferred electronically.

(b) "Installation charge" does not include a charge for repairs or renovations of:

(i) tangible personal property; or

(ii) a product transferred electronically.

(50) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:

(i) (A) a fixed term; or

(B) an indeterminate term; and

(ii) consideration.

(b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) "Lease" or "rental" does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title:

(A) upon completion of required payments; and

(B) if the payment of an option price does not exceed the greater of:

(I) $100; or

(II) 1% of the total required payments; or

(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (50)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

(51) "Load and leave" means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(52) "Local taxing jurisdiction" means a:

(a) county that is authorized to impose an agreement sales and use tax;

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

(53) "Manufactured home" is as defined in Section [~~58-56-3~~] 15A-1-302.

(54) For purposes of Section 59-12-104, "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (54)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1.

(55) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

(i) an adopted child or adopted stepchild; or

(ii) a foster child or foster stepchild;

(b) grandchild or stepgrandchild;

(c) grandparent or stepgrandparent;

(d) nephew or stepnephew;

(e) niece or stepniece;

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

(i) person who is the spouse of a person described in Subsections (55)(a) through (g); or

(j) person similar to a person described in Subsections (55)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(56) "Mobile home" is as defined in Section [~~58-56-3~~] 15A-1-302.

(57) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(58) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (58)(a)(i) and the termination point described in Subsection (58)(a)(ii) are not fixed.

(b) "Mobile wireless service" includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "commercial mobile radio service provider."

(59) (a) Except as provided in Subsection (59)(c), "mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (59)(a).

(c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(60) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales and use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(61) "Model 2 seller" means a seller registered under the agreement that:

(a) except as provided in Subsection (61)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(62) (a) Subject to Subsection (62)(b), "model 3 seller" means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least $500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (62)(a), "model 3 seller" includes an affiliated group of sellers using the same proprietary system.

(63) "Model 4 seller" means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(64) "Modular home" means a modular unit as defined in Section [~~58-56-3~~] 15A-1-302.

(65) "Motor vehicle" is as defined in Section 41-1a-102.

(66) "Oil shale" means a group of fine black to dark brown shales containing bituminous material that yields petroleum upon distillation.

(67) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(68) (a) "Paging service" means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (68)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(69) "Pawnbroker" is as defined in Section 13-32a-102.

(70) "Pawn transaction" is as defined in Section 13-32a-102.

(71) (a) "Permanently attached to real property" means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (71)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:

(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (71)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections (71)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection (111)(c).

(72) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(73) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(74) (a) "Postpaid calling service" means a telecommunications service a person obtains by making a payment on a call-by-call basis:

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) "Postpaid calling service" includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(75) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(76) "Prepaid calling service" means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(77) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

(ii) other service that is not a telecommunications service, including:

(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(78) (a) "Prepared food" means:

(i) food:

(A) sold in a heated state; or

(B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) except as provided in Subsection (78)(c), food sold with an eating utensil provided by the seller, including a:

(A) plate;

(B) knife;

(C) fork;

(D) spoon;

(E) glass;

(F) cup;

(G) napkin; or

(H) straw.

(b) "Prepared food" does not include:

(i) food that a seller only:

(A) cuts;

(B) repackages; or

(C) pasteurizes; or

(ii) (A) the following:

(I) raw egg;

(II) raw fish;

(III) raw meat;

(IV) raw poultry; or

(V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection (78)(b)(ii)(A) to prevent food borne illness; or

(iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

(B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

(IV) bread;

(V) a bun;

(VI) a cake;

(VII) a cookie;

(VIII) a croissant;

(IX) a danish;

(X) a donut;

(XI) a muffin;

(XII) a pastry;

(XIII) a pie;

(XIV) a roll;

(XV) a tart;

(XVI) a torte; or

(XVII) a tortilla.

(c) Notwithstanding Subsection (78)(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

(i) a container; or

(ii) packaging.

(79) "Prescription" means an order, formula, or recipe that is issued:

(a) (i) orally;

(ii) in writing;

(iii) electronically; or

(iv) by any other manner of transmission; and

(b) by a licensed practitioner authorized by the laws of a state.

(80) (a) Except as provided in Subsection (80)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

(i) by the author or other creator of the computer software; and

(ii) to the specifications of a specific purchaser.

(b) "Prewritten computer software" includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

(A) by the author or other creator of the computer software; and

(B) to the specifications of a specific purchaser;

(ii) notwithstanding Subsection (80)(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and

(B) if the modification or enhancement described in Subsection (80)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) Notwithstanding Subsection (80)(b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection (80)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

(ii) separately stated on the invoice or other statement of price provided to the purchaser.

(81) (a) "Private communication service" means a telecommunications service:

(i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and

(ii) regardless of the manner in which the one or more communications channels are connected.

(b) "Private communications service" includes the following provided in connection with the use of one or more communications channels:

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

(iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

(82) (a) "Prosthetic device" means a device that is worn on or in the body to:

(i) artificially replace a missing portion of the body;

(ii) prevent or correct a physical deformity or physical malfunction; or

(iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

(i) parts used in the repairs or renovation of a prosthetic device;

(ii) replacement parts for a prosthetic device;

(iii) a dental prosthesis; or

(iv) a hearing aid.

(c) "Prosthetic device" does not include:

(i) corrective eyeglasses; or

(ii) contact lenses.

(83) (a) "Protective equipment" means an item:

(i) for human wear; and

(ii) that is:

(A) designed as protection:

(I) to the wearer against injury or disease; or

(II) against damage or injury of other persons or property; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "protective equipment"; and

(ii) that are consistent with the list of items that constitute "protective equipment" under the agreement.

(84) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:

(i) regardless of:

(A) characteristics;

(B) copyright;

(C) form;

(D) format;

(E) method of reproduction; or

(F) source; and

(ii) made available in printed or electronic format.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "photocopy."

(85) (a) "Purchase price" and "sales price" mean the total amount of consideration:

(i) valued in money; and

(ii) for which tangible personal property, a product transferred electronically, or services are:

(A) sold;

(B) leased; or

(C) rented.

(b) "Purchase price" and "sales price" include:

(i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;

(ii) expenses of the seller, including:

(A) the cost of materials used;

(B) a labor cost;

(C) a service cost;

(D) interest;

(E) a loss;

(F) the cost of transportation to the seller; or

(G) a tax imposed on the seller;

(iii) a charge by the seller for any service necessary to complete the sale; or

(iv) consideration a seller receives from a person other than the purchaser if:

(A) (I) the seller actually receives consideration from a person other than the purchaser; and

(II) the consideration described in Subsection (85)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(c) "Purchase price" and "sales price" do not include:

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

(C) taken by a purchaser on a sale; and

(D) that is not reimbursed by a third party; or

(ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:

(A) the following from credit extended on the sale of tangible personal property or services:

(I) a carrying charge;

(II) a financing charge; or

(III) an interest charge;

(B) a delivery charge;

(C) an installation charge;

(D) a manufacturer rebate on a motor vehicle; or

(E) a tax or fee legally imposed directly on the consumer.

(86) "Purchaser" means a person to whom:

(a) a sale of tangible personal property is made;

(b) a product is transferred electronically; or

(c) a service is furnished.

(87) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(88) "Renewable energy" means:

(a) biomass energy;

(b) hydroelectric energy;

(c) geothermal energy;

(d) solar energy; or

(e) wind energy.

(89) (a) "Renewable energy production facility" means a facility that:

(i) uses renewable energy to produce electricity; and

(ii) has a production capacity of 20 kilowatts or greater.

(b) A facility is a renewable energy production facility regardless of whether the facility is:

(i) connected to an electric grid; or

(ii) located on the premises of an electricity consumer.

(90) "Rental" is as defined in Subsection (50).

(91) "Repairs or renovations of tangible personal property" means:

(a) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(b) attaching tangible personal property or a product that is transferred electronically to other tangible personal property if the other tangible personal property to which the tangible personal property or product that is transferred electronically is attached is not permanently attached to real property.

(92) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

(93) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

(ii) at an institution, including a nursing home or a school, if the telecommunications service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection (93)(a), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

(94) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(95) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

(96) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(97) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

(iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(98) "Sale at retail" is as defined in Subsection (95).

(99) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

(100) "Sales price" is as defined in Subsection (85).

(101) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of a uniform, protective equipment, or sports or recreational equipment that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

(I) food and food ingredients; or

(II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection (101)(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

(C) protective equipment; or

(D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

(102) For purposes of this section and Section 59-12-104, "school":

(a) means:

(i) an elementary school or a secondary school that:

(A) is a:

(I) public school; or

(II) private school; and

(B) provides instruction for one or more grades kindergarten through 12; or

(ii) a public school district; and

(b) includes the Electronic High School as defined in Section 53A-15-1002.

(103) "Seller" means a person that makes a sale, lease, or rental of:

(a) tangible personal property;

(b) a product transferred electronically; or

(c) a service.

(104) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating, processing, research, or development materials" includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection (104)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

(105) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(106) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(107) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(108) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "sports or recreational equipment"; and

(ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

(109) "State" means the state of Utah, its departments, and agencies.

(110) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(111) (a) Except as provided in Subsection (111)(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software.

(c) "Tangible personal property" includes the following regardless of whether the item is attached to real property:

(i) a dishwasher;

(ii) a dryer;

(iii) a freezer;

(iv) a microwave;

(v) a refrigerator;

(vi) a stove;

(vii) a washer; or

(viii) an item similar to Subsections (111)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) a hot water heater;

(ii) a water filtration system; or

(iii) a water softener system.

(112) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and require further processing other than mechanical blending before becoming finished petroleum products.

(113) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection (113)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

(i) telecommunications switching or routing equipment, machinery, or software; or

(ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection (113)(a):

(i) a pole;

(ii) software;

(iii) a supplementary power supply;

(iv) temperature or environmental equipment or machinery;

(v) test equipment;

(vi) a tower; or

(vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (113)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (113)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (113)(b)(i) through (vi).

(114) "Telecommunications equipment, machinery, or software required for 911 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

(115) "Telecommunications maintenance or repair equipment, machinery, or software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

(a) telecommunications enabling or facilitating equipment, machinery, or software;

(b) telecommunications switching or routing equipment, machinery, or software; or

(c) telecommunications transmission equipment, machinery, or software.

(116) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

(i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:

(A) on the code, form, or protocol of the content;

(B) for the purpose of electronic conveyance, routing, or transmission; and

(C) regardless of whether the service:

(I) is referred to as voice over Internet protocol service; or

(II) is classified by the Federal Communications Commission as enhanced or value added;

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

(i) advertising, including directory advertising;

(ii) an ancillary service;

(iii) a billing and collection service provided to a third party;

(iv) a data processing and information service if:

(A) the data processing and information service allows data to be:

(I) (Aa) acquired;

(Bb) generated;

(Cc) processed;

(Dd) retrieved; or

(Ee) stored; and

(II) delivered by an electronic transmission to a purchaser; and

(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) installation or maintenance of the following on a customer's premises:

(A) equipment; or

(B) wiring;

(vi) Internet access service;

(vii) a paging service;

(viii) a product transferred electronically, including:

(A) music;

(B) reading material;

(C) a ring tone;

(D) software; or

(E) video;

(ix) a radio and television audio and video programming service:

(A) regardless of the medium; and

(B) including:

(I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

(II) cable service as defined in 47 U.S.C. Sec. 522(6); or

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

(x) a value-added nonvoice data service; or

(xi) tangible personal property.

(117) (a) "Telecommunications service provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; and

(ii) engages in an activity described in Subsection (117)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (117)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

(118) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection (118)(b) if that item is purchased or leased primarily for switching or routing:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (118)(a):

(i) a bridge;

(ii) a computer;

(iii) a cross connect;

(iv) a modem;

(v) a multiplexer;

(vi) plug in circuitry;

(vii) a router;

(viii) software;

(ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (118)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (118)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (118)(b)(i) through (ix).

(119) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection (119)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (119)(a):

(i) an amplifier;

(ii) a cable;

(iii) a closure;

(iv) a conduit;

(v) a controller;

(vi) a duplexer;

(vii) a filter;

(viii) an input device;

(ix) an input/output device;

(x) an insulator;

(xi) microwave machinery or equipment;

(xii) an oscillator;

(xiii) an output device;

(xiv) a pedestal;

(xv) a power converter;

(xvi) a power supply;

(xvii) a radio channel;

(xviii) a radio receiver;

(xix) a radio transmitter;

(xx) a repeater;

(xxi) software;

(xxii) a terminal;

(xxiii) a timing unit;

(xxiv) a transformer;

(xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections (119)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection (119)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (119)(b)(i) through (xxv).

(120) "Tobacco" means:

(a) a cigarette;

(b) a cigar;

(c) chewing tobacco;

(d) pipe tobacco; or

(e) any other item that contains tobacco.

(121) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

(122) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

(123) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

(i) code;

(ii) content;

(iii) form; or

(iv) protocol.

(124) (a) Subject to Subsection (124)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

(i) an aircraft as defined in Section 72-10-102;

(ii) a vehicle as defined in Section 41-1a-102;

(iii) an off-highway vehicle as defined in Section 41-22-2; or

(iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

(i) a vehicle described in Subsection (124)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

(125) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (124).

(126) (a) "Vertical service" means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

(A) identify a caller; and

(B) manage multiple calls and call connections.

(b) "Vertical service" includes an ancillary service that allows a customer to manage a conference bridging service.

(127) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) "Voice mail service" does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

(128) (a) Except as provided in Subsection (128)(b), "waste energy facility" means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

(A) tires;

(B) waste coal; or

(C) oil shale; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) "Waste energy facility" does not include a facility that incinerates:

(i) municipal solid waste;

(ii) hospital waste as defined in 40 C.F.R. 60.51c; or

(iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

(129) "Watercraft" means a vessel as defined in Section 73-18-2.

(130) "Wind energy" means wind used as the sole source of energy to produce electricity.

(131) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

Section 127. Section 63A-5-206 is amended to read:

63A-5-206. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

(a) "Capital developments" and "capital improvements" have the same meaning as provided in Section 63A-5-104.

(b) "Compliance agency" has the same meaning as provided in [~~Subsection 58-56-3(4)~~] Section 15A-1-202.

(c) (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.

(ii) "Facility" does not mean an unoccupied structure that is a component of the state highway system.

(d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.

(f) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than $100,000, unless there is memorandum of understanding between the director and an institution of higher education that permits the institution of higher education to exercise direct supervision for a project with a total project construction cost of not greater than $250,000.

(ii) A state entity may exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if:

(A) the total project construction cost, regardless of the funding sources, is $100,000 or less; and

(B) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvements, and code inspection standards.

(b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.

(c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency shall approve the location, design, plans, and specifications.

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

(a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

(b) is within a designated research park at the University of Utah or Utah State University;

(c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(4) (a) (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and

guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

(b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency or institution and that are located on state property, the State Building Board may authorize the owner to administer the design and construction of the project instead of the division.

(5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:

(a) oversee and manage the construction without involvement, oversight, or management from the division; or

(b) arrange for management of the project by the division.

(6) (a) The role of compliance agency as provided in [~~Title 58, Chapter 56, Utah Uniform Building Standards Act~~] Title 15A, State Construction and Fire Codes Act, shall be provided by:

(i) the director, for projects administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for projects under Subsection (3)(a);

(iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

(iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or

(v) the institution, for projects exempt from the division's administration under Subsection (5)(a).

(b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).

(c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

(i) only review plans and inspect construction to enforce the [~~building codes as adopted by the Uniform Building Codes Commission~~] State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(ii) charge a building permit fee of no more than the amount it could have charged if the land upon which the improvements are located were not owned by the state.

(d) (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Sections 10-9a-304 and 17-27a-304.

(ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and

(b) is appropriate for the purpose and setting of the project.

(8) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective.

(9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

(11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

(12) (a) The director, the director's designee, or the state entity to whom control has been designated under Subsection (4), shall notify in writing the elected representatives of local government entities directly and substantively

affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding $250,000, if:

(i) the nature of the project has been significantly altered since prior notification;

(ii) the project would significantly change the nature of the functions presently conducted at the location; or

(iii) the project is new construction.

(b) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss these issues.

(13) (a) (i) Before beginning the construction of student housing on property owned by the state or a public institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

(ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:

(A) the county in whose unincorporated area the privately owned residential property is located; or

(B) the municipality in whose boundaries the privately owned residential property is located.

(b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.

(ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Section 128. Section 70D-2-102 is amended to read:

70D-2-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(b), "broker" means a person who in the regular course of business assists a person in obtaining a mortgage loan for a fee or other consideration paid directly or indirectly.

(b) "Broker" does not include a person solely because of the person's:

(i) real estate brokerage activities; or

(ii) activities as an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

(2) "Business as a lender, broker, or servicer" means a person who engages in an act for compensation or in the expectation of compensation that makes the person a lender, broker, or servicer.

(3) (a) Except as provided in Subsection (3)(b), "lender" means a person who in the regular course of business originates a loan secured by a mortgage.

(b) "Lender" does not include a person who:

(i) as a seller only receives one or more mortgages as security for a purchase money obligation; or

(ii) only receives a mortgage as security for an obligation:

(A) payable on an installment or deferred payment basis; and

(B) arising out of materials furnished or services rendered in the improvement of real property.

(4) "Manufactured home" means a transportable factory built housing unit that:

(a) is constructed:

(i) on or after June 15, 1976, according to the National Manufactured Housing Construction and Safety Standards Act of 1974; and

(ii) in one or more sections, which:

(A) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or

(B) when erected on site, is 400 or more square feet;

(b) is built on a permanent chassis;

(c) is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and

(d) includes the plumbing, heating, air-conditioning, and electrical systems.

(5) "Mobile home" means a transportable factory built housing unit built before June 15, 1976, in accordance with a state mobile home code that existed before the National Manufactured Housing Construction and Safety Standards Act of 1974.

(6) "Permanently affixed" means anchored to, and supported by, a permanent foundation or installed in accordance with the manufactured housing installation standard code referred to in Section [~~58-56-4~~] 15A-1-202.

(7) "Servicer" means a person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan.

Section 129. Section 73-3-1.5 is amended to read:

73-3-1.5. Capture and storage of precipitation.

(1) As used in this section, "parcel" means an identifiable contiguous unit of property that is treated as separate for valuation or zoning purposes and includes an improvement on that unit of property.

(2) Notwithstanding Section 73-3-2, a person may:

(a) directly capture and store precipitation on a parcel owned or leased by the person in accordance with Subsection (3) or (4); and

(b) place the water captured and stored as provided in Subsection (2)(a) to beneficial use on the parcel on which the water is captured and stored.

(3) If a person collects or stores precipitation in an underground storage container, the person may collect and store precipitation:

(a) in only one underground storage container for a parcel if the underground storage container:

(i) has a maximum capacity of no more than 2,500 gallons; and

(ii) is installed in accordance with relevant [~~building codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act~~] provisions of the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(b) after registering for the capture and storage of precipitation in accordance with Subsection (5).

(4) If a person collects or stores precipitation in a covered storage container, the person may collect and store precipitation in no more than two covered storage containers, if the maximum storage capacity of any one covered storage container is not greater than 100 gallons.

(5) (a) The state engineer shall provide a website on which a person may register as required by Subsection (3).

(b) To register, a person shall complete information required by the state engineer including the:

(i) name and address of the person capturing or storing precipitation;

(ii) total capacity of all containers storing precipitation; and

(iii) street address or other suitable description of the location where precipitation is to be captured and stored.

Section 130. Repealer.

This bill repeals:

Section 53-7-106, Adoption of state fire code.

Section 58-56-4, Adoption of state construction code -- Amendments -- Approval of other codes -- Exemptions.

Section 58-56-5, Uniform Building Code Commission -- Composition of commission -- Commission duties and responsibilities -- Unified Code Analysis Council.

Section 58-56-6, Codes -- Division duties and responsibilities.

Section 58-56-7, Code amendment process.

Section 58-56-8, Compliance with codes -- Responsibility for inspections -- Appeals.

Section 58-56-11, Standards for specialized buildings.

Section 58-56-12, Factory built housing units.

Section 58-56-13, Modular units.

Section 58-56-14, Modification of factory built housing units and modular units.

Section 58-56-15, Factory built housing and modular units -- Division responsibility -- Unlawful conduct.

Section 58-56-19, Standardized building permit numbering.

Section 58-56-20, Standardized building permit content.

Section 58-56-21, Review of building inspection.

Section 131. Effective date.

This bill takes effect on July 1, 2011.

Section 132. Coordinating H.B. 203 with H.B. 260 -- Technically merging substantive amendments.

If this H.B. 203 and H.B. 260, Mechanics' Liens Revisions, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication:

(1) modify Subsection 15A-1-209(3)(b) to read:

"(b) The standardized building permit form created under this Subsection (3) shall include fields for indicating the following information:

(i) the name and address of the owner of the property on which the project will occur;

(ii) the name and address of the contractor for the project;

(iii) (A) the address of the project; or

(B) a general description of the project;

(iv) the county in which the property on which the project will occur is located;

(v) the tax parcel identification number of the property; and

(vi) whether the permit applicant is an original contractor or owner-builder."; and

(2) change the citation in Subsection (3)(f)(ii) from "Subsection (3)(b)(iii)" to "Subsection (3)(b)(vi)."

CHAPTER 15
S. B. 11
Passed February 9, 2011
Approved March 7, 2011
Effective March 7, 2011

WORKER CLASSIFICATION COORDINATED ENFORCEMENT

Chief Sponsor: Karen Mayne
House Sponsor: Todd E. Kiser
Cosponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies labor provisions to address worker classification and related issues of enforcement.

Highlighted Provisions:

This bill:

- changes the Independent Contractor Database Enforcement Council to the Worker Classification Coordinated Enforcement Council, including:
  - addressing membership;
  - modifying the duties of the council; and
  - addressing the sharing of information; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-213, as last amended by Laws of Utah 2008, Chapter 273 and renumbered and amended by Laws of Utah 2008, Chapter 382

63I-1-234, as last amended by Laws of Utah 2010, Chapter 319

ENACTS:

34-47-101, Utah Code Annotated 1953
34-47-102, Utah Code Annotated 1953
34-47-201, Utah Code Annotated 1953
34-47-202, Utah Code Annotated 1953

REPEALS:

13-46-101, as enacted by Laws of Utah 2008, Chapter 273
13-46-102, as enacted by Laws of Utah 2008, Chapter 273
13-46-103, as enacted by Laws of Utah 2008, Chapter 273
13-46-201, as enacted by Laws of Utah 2008, Chapter 273
13-46-202, as enacted by Laws of Utah 2008, Chapter 273
13-46-301, as enacted by Laws of Utah 2008, Chapter 273
13-46-302, as enacted by Laws of Utah 2008, Chapter 273
13-46-303, as enacted by Laws of Utah 2008, Chapter 273

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

Section 1. Section 34-47-101 is enacted to read:

CHAPTER 47. WORKER CLASSIFICATION COORDINATED ENFORCEMENT ACT

Part 1. General Provisions

34-47-101. Title.

This chapter is known as the "Worker Classification Coordinated Enforcement Act."

Section 2. Section 34-47-102 is enacted to read:

34-47-102. Definitions.

As used in this chapter:

(1) "Commission" means the Labor Commission.

(2) "Commissioner" means the commissioner of the Labor Commission.

(3) "Council" means the Worker Classification Coordinated Enforcement Council created in Section 34-47-201.

(4) "Member agency" means an agency that is represented on the council.

(5) "Misclassification" means to classify an individual as something other than an employee, if under the relevant law the individual is required to be classified as an employee.

Section 3. Section 34-47-201 is enacted to read:

Part 2. Worker Classification Coordinated Enforcement Council

34-47-201. Creation.

(1) (a) There is created within the commission the Worker Classification Coordinated Enforcement Council consisting of the following four members:

(i) the commissioner, or the commissioner's designee;

(ii) the executive director of the Department of Commerce, or the executive director's designee;

(iii) the executive director of the Department of Workforce Services, or the executive director's designee; and

(iv) the chair of the State Tax Commission, or the chair's designee.

(b) The Office of the Attorney General shall work cooperatively with the council.

(2) The commissioner, or the commissioner's designee, is chair of the council.

(3) (a) A majority of the council members constitutes a quorum.

(b) A vote of the majority of the council members present when a quorum is present is an action of the council.

(c) Subject to Section 34-47-202, the council shall meet at the call of the chair, except that the chair shall call a meeting at least quarterly.

(d) The council may adopt additional procedures or requirements for:

(i) voting, when there is a tie of the council members;

(ii) how meetings are to be called; and

(iii) the frequency of meetings.

Section 4. Section 34-47-202 is enacted to read:

34-47-202. Duties and powers of the council.

(1) The council shall meet at least quarterly with the attorney general or a designee of the attorney general to coordinate regulatory and law enforcement efforts related to misclassification.

(2) (a) The council shall report by no later than November 30 of each year to:

(i) the governor; and

(ii) the Business and Labor Interim Committee.

(b) The report required by this Subsection (2) shall include:

(i) the nature and extent of misclassification in this state;

(ii) the results of regulatory and law enforcement efforts related to the council;

(iii) the status of sharing information by member agencies; and

(iv) recommended legislative changes, if any.

(c) As part of the report required by this Subsection (2), the chairs of the Business and Labor Interim Committee shall provide an opportunity to the following to report to the Business and Labor Interim Committee on the effectiveness of the council:

(i) the attorney general; and

(ii) each member agency.

(3) The council may study:

(a) how to reduce costs to the state resulting from misclassification;

(b) how to extend outreach and education efforts regarding the nature and requirements of classifying an individual;

(c) how to promote efficient and effective information sharing amongst the member agencies; and

(d) the need, if any, to create by statute a database or other method to facilitate sharing of information related to misclassification.

(4) A member agency shall cooperate with the commission and council to provide information related to misclassification to the extent that:

(a) the information is public information; or

(b) providing the information is otherwise permitted by law other than this chapter.

(5) (a) A record provided to the commission or council under this chapter is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified as private or controlled under Title 63G, Chapter 2.

(b) Notwithstanding Subsection (5)(a), the commission or council may disclose the record to the extent:

(i) necessary to take an administrative action by a member agency;

(ii) necessary to prosecute a criminal act; or

(iii) that the record is:

(A) obtainable from a source other than the member agency that provides the record to the commission or council; or

(B) public information or permitted to be disclosed by a law other than this chapter.

Section 5. Section 63I-1-213 is amended to read:

63I-1-213. Repeal dates, Title 13.

[~~(1)~~] Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.

[~~(2) Title 13, Chapter 46, Independent Contractor Database Act, is repealed July 1, 2013.~~]

Section 6. Section 63I-1-234 is amended to read:

63I-1-234. Repeal dates, Titles 34 and 34A.

(1) Title 34, Chapter 47, Worker Classification Coordinated Enforcement Act, is repealed July 1, 2013.

[~~(1)~~] (2) Section 34A-2-202.5 is repealed December 31, 2020.

[~~(2)~~] (3) Section 34A-2-705 and Subsection 59-9-101(2)(c)(iv) are repealed July 1, 2013.

[~~(3)~~] (4) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act, is repealed July 1, 2014.

Section 7. Repealer.

This bill repeals:

Section 13-46-101, Title.

Section 13-46-102, Definitions.

Section 13-46-103, Scope.

Section 13-46-201, Creation.

Section 13-46-202, Duties of the council.

Section 13-46-301, Creation.

Section 13-46-302, Confidentiality of information in the database.

Section 13-46-303, Liability.

Section 8. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the

constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 16
H. B. 477
Passed March 7, 2011
Approved March 8, 2011
Effective July 1, 2011
(Special Note: H.B. 477 was repealed by Laws of Utah 2011, First Special Session, Chapter 1)

GOVERNMENT RECORDS AMENDMENTS

Chief Sponsor: John Dougall
Senate Sponsor: Lyle W. Hillyard
Cosponsors: Johnny Anderson
Roger E. Barrus
Jim Bird
Melvin R. Brown
David G. Butterfield
LaVar Christensen
Fred C. Cox
Bradley M. Daw
Brad L. Dee
Jack R. Draxler
Susan Duckworth
James A. Dunnigan
Julie Fisher
Gage Froerer
Brad J. Galvez
Francis D. Gibson
Richard A. Greenwood
Keith Grover
Stephen G. Handy
Wayne A. Harper
Lynn N. Hemingway
Neal B. Hendrickson
Christopher N. Herrod
Gregory H. Hughes
Eric K. Hutchings
Don L. Ipson
Ken Ivory
Todd E. Kiser
Bradley G. Last
Rebecca D. Lockhart
John G. Mathis
Kay L. McIff
Ronda Rudd Menlove
Michael T. Morley
Merlynn T. Newbold
Jim Nielson
Michael E. Noel
Curtis Oda
Patrick Painter
Lee B. Perry
Jeremy A. Peterson
Val L. Peterson
Dixon M. Pitcher
Paul Ray
Holly J. Richardson
Douglas Sagers
Stephen E. Sandstrom
Dean Sanpei
Kenneth W. Sumsion
Evan J. Vickers
R. Curt Webb
Mark A. Wheatley
Ryan D. Wilcox
Larry B. Wiley
Brad R. Wilson
Bill Wright

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act and other provisions relating to government records.

Highlighted Provisions:

This bill:

- modifies cross references;
- eliminates codified intent language;
- provides a cross reference in the Public Records Management Act to identify legislative exemptions to the act;
- makes technical and organizational modifications to modernize and clarify language;
- modifies definitions;
- provides that voice mails, instant messages, video chats, and text messages are not records subject to the act, with some exceptions;
- modifies provisions defining records that are subject to regulation by the act;
- clarifies that fee provisions may be subject to approval procedures under the Budgetary Procedures Act;
- modifies provisions governing fees and costs related to records requests;
- modifies language identifying "extraordinary circumstances" related to records requests;
- modifies provisions governing shared records procedures and application;
- modifies provisions and requirements regulating records that must be disclosed;
- provides that personal and financial information submitted to or received by a Senate confirmation committee is a private record;
- provides that personal emails or similar electronic addresses of current or former government employees or applicants are private records;
- provides protected status for certain records of the Office of the Utah State Auditor and Office of Legislative Auditor General;
- provides that records may be classified as protected if they are prepared in anticipation of litigation;
- provides that work product records may be classified as protected if the record involves anticipated or pending litigation;
- modifies the protected record status of documents prepared, received, or maintained by a legislator;
- modifies the protected record status of communications between legislators and staff in relation to performance of their official duties;
- provides that records concerning a governmental entity's strategy may be classified as protected if the record is prepared for anticipated litigation, rather than only for pending litigation;
- provides protected status for internal communications and working papers of the governor's office and modifies provisions limiting the length of protected status coverage for certain records of the governor;
- provides that data and working papers associated with a fiscal note for legislation are protected until the legislation has passed;

- provides protected status for personal email addresses and similar electronic addresses in some situations;
- prohibits a governmental entity's chief administrative officer, the records committee, and a court from releasing certain protected records via means of a balancing test unless it is determined, by a preponderance of the evidence, that the public interest favoring access to the record outweighs the interest favoring restriction of access to the record;
- provides that the Legislature may adopt policies regarding the receipt, processing, and response to record requests;
- rewrites and reorganizes the section addressing the act's application to the Legislature;
- addresses legislative compliance requirements with Title 63G, Chapter 2, Part 9, Public Associations; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

20A-2-104, as last amended by Laws of Utah 2010, Chapter 197
58-1-301, as last amended by Laws of Utah 2008, Chapter 382
61-1-4, as last amended by Laws of Utah 2009, Chapter 351
61-2f-203, as renumbered and amended by Laws of Utah 2010, Chapter 379
63G-2-103, as last amended by Laws of Utah 2010, Chapter 366
63G-2-203, as last amended by Laws of Utah 2009, Chapter 183
63G-2-204, as last amended by Laws of Utah 2010, Chapter 380
63G-2-206, as last amended by Laws of Utah 2009, Chapter 344
63G-2-301, as last amended by Laws of Utah 2009, Chapter 344
63G-2-302, as last amended by Laws of Utah 2010, Chapters 36 and 379
63G-2-303, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
63G-2-401, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-403, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-404, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-703, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-803, as last amended by Laws of Utah 2009, Chapter 44

ENACTS:

63A-12-109, Utah Code Annotated 1953

REPEALS:

63G-2-102, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 20A-2-104 is amended to read:

20A-2-104. Voter registration form -- Registered voter lists -- Fees for copies.

(1) Every person applying to be registered shall complete a registration form printed in substantially the following form:

UTAH ELECTION REGISTRATION FORM

Are you a citizen of the United States of America?
Yes No

Will you be 18 years old on or before election day?
Yes No

If you checked "no" to either of the above two questions, do not complete this form.

Name of Voter

_____
First Middle Last

Utah Driver License or Utah Identification Card Number_____

Date of Birth_____

Street Address of Principal Place of Residence

_____
City County State Zip Code

Telephone Number (optional)_____

Last four digits of Social Security Number _____

Last former address at which I was registered to vote (if known)

_____
City County State Zip Code

Political Party

(a listing of each registered political party, as defined in Section 20A-8-101 and maintained by the lieutenant governor under Section 67-1a-2, with each party's name preceded by a checkbox) Unaffiliated (no political party preference) Other (Please specify)_____

I do swear (or affirm), subject to penalty of law for false statements, that the information contained in this form is true, and that I am a citizen of the United States and a resident of the state of Utah, residing at the above address. I will be at least 18 years old and will have resided in Utah for 30 days immediately before the next election. I am not a convicted felon currently incarcerated for commission of a felony.

Signed and sworn

_____
Voter's Signature

_____
(month/day/year).

CITIZENSHIP AFFIDAVIT

Name:

Name at birth, if different:

Place of birth:

Date of birth:

Date and place of naturalization (if applicable):

I hereby swear and affirm, under penalties for voting fraud set forth below, that I am a citizen and that to the best of my knowledge and belief the information above is true and correct._____Signature of Applicant

In accordance with Section 20A-2-401, the penalty for willfully causing, procuring, or allowing yourself to be registered to vote if you know you are not entitled to register to vote is up to one year in jail and a fine of up to $2,500.

NOTICE: IN ORDER TO BE ALLOWED TO VOTE, YOU MUST PRESENT VALID VOTER IDENTIFICATION TO THE POLL WORKER BEFORE VOTING, WHICH MUST BE A VALID FORM OF PHOTO IDENTIFICATION THAT SHOWS YOUR NAME AND PHOTOGRAPH; OR

TWO DIFFERENT FORMS OF IDENTIFICATION THAT SHOW YOUR NAME AND CURRENT ADDRESS.FOR OFFICIAL USE ONLY

Type of I.D. _____

Voting Precinct _____

Voting I.D. Number _____

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(2) (a) Except as provided under Subsection (2)(b), the county clerk shall retain a copy of each voter registration form in a permanent countywide alphabetical file, which may be electronic or some other recognized system.

(b) The county clerk may transfer a superceded voter registration form to the Division of Archives and Records Service created under Section 63A-12-101.

(3) (a) Each county clerk shall retain lists of currently registered voters.

(b) The lieutenant governor shall maintain a list of registered voters in electronic form.

(c) If there are any discrepancies between the two lists, the county clerk's list is the official list.

(d) The lieutenant governor and the county clerks may charge the fees established under the authority of [~~Subsection~~] Section 63G-2-203[~~(10)~~] to individuals who wish to obtain a copy of the list of registered voters.

(4) When political parties not listed on the voter registration form qualify as registered political parties under Title 20A, Chapter 8, Political Party Formation and Procedures, the lieutenant governor shall inform the county clerks about the name of the new political party and direct the county clerks to ensure that the voter registration form is modified to include that political party.

(5) Upon receipt of a voter registration form from an applicant, the county clerk or the clerk's designee shall:

(a) review each voter registration form for completeness and accuracy; and

(b) if the county clerk believes, based upon a review of the form, that a person may be seeking to register to vote who is not legally entitled to register to vote, refer the form to the county attorney for investigation and possible prosecution.

Section 2. Section 58-1-301 is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's Social Security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's Social Security number is a private record under [~~Subsection 63G-2-302(1)(h)~~] Section 63G-2-302.

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Section 3. Section 61-1-4 is amended to read:

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative shall obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) (I) the qualifications and business history of the applicant; and

(II) in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) whether the applicant has been subject to:

(I) an injunction, administrative order, or misdemeanor conviction involving a security or any aspect of the securities business; or

(II) a felony conviction; and

(E) the applicant's financial condition and history.

(ii) An applicant's Social Security number is a private record under [~~Subsection 63G-2-302(1)(h)~~] Section 63G-2-302.

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) A license or notice filing of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(v) (A) For purposes of the activities of a licensee in this state, during the time period that a broker-dealer or investment adviser is licensed in this state:

(I) the broker-dealer shall maintain a principal; and

(II) the investment adviser shall maintain a designated official.

(B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for a person to identify for the division:

(I) a principal or designated official at the time a license is issued; and

(II) a different principal or designated official if:

(Aa) a broker-dealer changes its principal; or

(Bb) an investment adviser changes its designated official.

(C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not required to be separately licensed with the division.

(2) Except with respect to a federal covered adviser whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, before acting as a federal covered adviser in this state, a notice filing consisting of the documents filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) An applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) A person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order:

(a) require a minimum capital for a licensed broker-dealer, subject to the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) establish minimum financial requirements for an investment adviser:

(i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940; and

(ii) which may include different requirements for an investment adviser who maintains custody of or has discretionary authority over client funds or securities and an investment adviser who does not.

(6) (a) The division may by rule or order require a licensed broker-dealer or investment adviser who has custody of or discretionary authority over client funds or securities to post one or more bonds in amounts and under conditions as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

(b) An appropriate deposit of cash or securities may be accepted in lieu of a required bond.

(c) A bond may not be required of a licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) A bond shall provide for suit on the bond by a person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) A bond shall provide that a suit may not be maintained to enforce liability on the bond unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

Section 4. Section 61-2f-203 is amended to read:

61-2f-203. Licensing requirements.

(1) (a) Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of an applicant for:

(i) a principal broker license;

(ii) an associate broker license; or

(iii) a sales agent license.

(b) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.

(c) (i) The division, with the concurrence of the commission, shall require an applicant for:

(A) a sales agent license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours; and

(B) an associate broker or a principal broker license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours.

(ii) An hour required by this section means 50 minutes of instruction in each 60 minutes.

(iii) The maximum number of program hours available to an individual is eight hours per day.

(d) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:

(i) the fundamentals of:

(A) the English language;

(B) arithmetic;

(C) bookkeeping; and

(D) real estate principles and practices;

(ii) the provisions of this chapter;

(iii) the rules established by the commission; and

(iv) any other aspect of Utah real estate license law considered appropriate.

(e) (i) Three years' full-time experience as a sales agent or its equivalent is required before an applicant may apply for, and secure a principal broker or associate broker license in this state.

(ii) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide the applicant's Social Security number, which is a private record under [~~Subsection 63G-2-302(1)(h)~~] Section 63G-2-302.

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with all the provisions of this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

(i) complying with all the provisions of this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) Except as provided in Subsection 61-2f-204(1)(e)(vi), the division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

(b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained before the revocation of a real estate license.

(5) (a) Notwithstanding Subsection (1), the commission may delegate to the division the authority to:

(i) review a class or category of applications for initial or renewed licenses;

(ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

(iii) approve or deny a license application without concurrence by the commission.

(b) (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for review of the denial of licensure.

(ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Section 5. Section 63A-12-109 is enacted to read:

63A-12-109. Applicability of chapter.

This chapter, with the exception of Sections 63A-12-102 and 63A-12-106, does not apply to the legislative branch of state government.

Section 6. Section 63G-2-103 is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is [~~controlled as provided by~~] classified as "controlled" under Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the

compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Senate, House of Representatives, Legislative Printing Office, Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, [~~the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature~~] a legislative committee, a legislative task force, or a legislative commission;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, [~~but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions~~] except for the exclusions specifically provided in Section 63G-2-701.

(b) "Governmental entity" also means [~~every~~] each office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business.

(c) "Governmental entity" does not mean:

(i) a political party, group, or caucus; or

(ii) a rules or sifting committee of the Legislature.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which [~~report~~] may [~~describe~~] include:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) [~~Initial~~] Subject to Subsection (14)(c), "initial contact [~~reports do not include~~] report" does not include follow-up or investigative reports prepared after the initial contact report. [~~However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).~~]

(c) "Initial contact report" includes information specified in Subsections (14)(a)(i) through (vi) if the information appears in a follow-up or investigative report unless the information is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) [~~"Legislative body" means the Legislature.~~] "Legislative staff employee" means an employee of the Senate, House of Representatives, Legislative Printing Office, Office of Legislative Auditor General, Office of Legislative Fiscal Analyst, or Office of Legislative Research and General Counsel.

(16) (a) "Legislature" means the Senate, House of Representatives, Legislative Printing Office, Office of Legislative Auditor General, Office of Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, a legislative committee, a legislative task force, a legislative commission, or any other office or subdivision of the legislative branch of state government.

(b) For purposes of regulation by this chapter, "Legislature" does not include:

(i) a political party, group, or caucus; or

(ii) a rules or sifting committee of the Legislature.

[~~(16)~~] (17) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

[~~(17)~~] (18) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) any other type of business organization; or

(f) any combination of Subsections (18)(a) through (e) acting in concert with one another.

[~~(18)~~] (19) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

[~~(19)~~] (20) "Private record" means a record containing data on individuals that is classified as "private" [~~as provided by~~] under Section 63G-2-302.

[~~(20)~~] (21) "Protected record" means a record that is classified as "protected" [~~as provided by~~] under Section 63G-2-305.

[~~(21)~~] (22) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

[~~(22)~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is readily reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

[~~(i) a personal note or personal communication~~]

(i) material in the following format:

(A) a voice mail message, or an electronic reproduction or textual representation of a voice mail message;

(B) an instant message, or a similar document, other than an email, that is electronically exchanged in the manner of a contemporaneous conversation, unless the exchange is an electronic meeting as governed by Section 52-4-207;

(C) a video chat, or similar transmission, whether or not the chat or transmission is saved in a retrievable form, that is electronically transmitted and has the form or content of a contemporaneous conversation, unless the video chat or transmission is an electronic meeting as governed by Section 52-4-207; or

(D) a text message, or similar text-based document, other than an email, that is electronically exchanged by means of a phone number;

(ii) a note prepared by an employee or officer of a governmental entity for the employee's or officer's own use or reference;

(iii) an oral, written, or video communication prepared or received by an employee or officer of a governmental entity [~~in the~~] in a capacity other than the employee's or officer's [~~private capacity~~] official governmental capacity;

[~~(ii)~~] (iv) a [~~temporary~~] draft or similar material prepared for the originator's [~~personal~~] use or prepared by the originator for the [~~personal~~] use of an individual for whom the originator is working;

[~~(iii)~~] (v) material that is legally owned by an individual [~~in the individual's private capacity~~] and unrelated to the individual's official governmental duties;

[~~(iv)~~] (vi) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

[~~(v)~~] (vii) proprietary software;

[~~(vi)~~] (viii) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

[~~(vii)~~] (ix) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

[~~(viii)~~] (x) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

[~~(ix)~~] (xi) a daily calendar [~~or other personal note~~] prepared by the originator for the originator's [~~personal~~] use or for the [~~personal~~] use of an individual for whom the originator is working;

[~~(x)~~] (xii) a computer program that is developed or purchased by or for any governmental entity for its own use;

[~~(xi)~~] (xiii) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of [~~any other body~~] a governmental entity charged by law with performing a quasi-judicial function;

[~~(xii)~~] (xiv) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

[~~(xiii)~~] (xv) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable

the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii); or

[~~(xiv)~~] (xvi) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205.

[~~(23)~~] (24) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

[~~(24)~~] (25) "Records committee" means the State Records Committee created in Section 63G-2-501.

[~~(25)~~] (26) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity[~~,~~] or [~~the~~] political subdivision to work with State Archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

[~~(26)~~] (27) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

[~~(27)~~] (28) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget that is:

(a) conducted[~~: (i)~~] by an institution within the state system of higher education defined in Section 53B-1-102[~~; and (ii)~~] through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by [~~an external~~]:

(i) an external person that is not created or controlled by the institution within the state system of higher education; or

(ii) an external federal, state, or local governmental entity.

[~~(28)~~] (29) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

[~~(29)~~] (30) "State archivist" means the director of the state archives.

[~~(30)~~] (31) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

(32) "Technical assistance" means the assistance of information technology experts, computer technicians, computer programmers, information technology staff members, or similarly qualified individuals.

Section 7. Section 63G-2-203 is amended to read:

63G-2-203. Fees -- Standard fee -- Establishment of fees -- Additional costs.

(1) (a) A governmental entity may charge a reasonable fee for processing requests for a record under this chapter in an amount sufficient to cover the governmental entity's actual cost of providing a record[~~. This fee shall be approved by~~], including costs of overhead and administration.

(b) (i) For a governmental entity with fees approved by the Legislature, the governmental entity's executive officer[~~.~~]shall approve each fee and the governmental entity shall establish each fee according to the requirements of Section 63J-1-504.

(ii) For a political subdivision of the state, the legislative body of the political subdivision shall establish each fee by ordinance or a written formal policy.

(iii) For the judiciary, the Judicial Council shall establish each fee by rule.

(iv) Notwithstanding Subsections (1)(b)(i) and (ii), the lieutenant governor shall, after consulting with the county clerks, establish uniform fees for requests for voter registration and voter history records according to the procedures and requirements of Section 63J-1-504.

(2) (a) [~~When a governmental entity compiles~~] In addition to the fees established under Subsection (1), a governmental entity may charge the cost of each of the following services performed in relation to a record request:

(i) the reasonable cost for copies, duplication, or transmission of records in response to the record request;

(ii) for a record request that requests or requires a record in a form other than that normally maintained by the governmental entity, [~~the actual costs under this section may include the following: (i)~~] the actual cost of [~~staff time~~] labor for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

[~~(ii)~~] (iii) for a record request that necessitates the review of a large number of records, the actual cost of [~~staff time~~] labor for search, retrieval, and [~~other direct administrative costs for complying with a request~~] organization or classification of the records;

(iv) for a record request that requires production of records, or a record series containing a substantial number of records, the actual cost of labor for review, organization, and classification of the records;

(v) for a record request that necessitates segregation of information or extensive editing or redacting, the actual cost of labor for review, segregation, editing, and redacting of the records;

(vi) for a record request that requires legal review in order to process or respond to the request, or to

classify records, the actual cost of labor for legal review and recommendations required in relation to the request; and

[~~(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).~~]

(vii) for a record request that necessitates technical assistance or other professional services in order to locate, search, retrieve, organize, review, reproduce, or classify records in response to the request, the actual cost of labor to perform the technical assistance or other professional services.

(b) [~~An hourly charge~~] In calculating the actual cost of labor charged under Subsection (2)(a) [~~may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.~~], a governmental entity:

(i) shall, for a service performed by an employee of the governmental entity, charge the actual hourly pay rate of each employee performing a service in response to the request, or the actual hourly pay rate of the lowest paid employee available to perform the service who, in the discretion of the custodian of records, has the job classification and training necessary to perform the service, whichever is lower;

(ii) shall, for a service performed by a person who is not an employee of the governmental entity, charge the actual rate charged to the governmental entity for each service performed in response to the request, provided that the service provider certifies that the rates charged are not higher than the actual hourly pay rate of the lowest paid person having the job classification and training necessary to perform the service; and

(iii) may not include the first quarter hour of time required to perform the service.

(c) When assessing an additional cost under Subsection (2)(a), a governmental entity shall:

(i) document the actual cost of labor in a manner that clearly identifies the hours and rate applied to each service and the actual cost of third party services charged to the governmental entity; and

(ii) provide the documentation to each requestor that is being assessed an additional cost for services in support of the additional cost assessed.

[~~(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.~~]

[~~(3) (a) Fees shall be established as provided in this Subsection (3).~~]

[~~(b) A governmental entity with fees established by the Legislature:~~]

[~~(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and~~]

[~~(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.~~]

[~~(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.~~]

[~~(d) The judiciary shall establish fees by rules of the judicial council.~~]

[~~(4)~~] (3) A governmental entity may choose to fulfill a record request without [~~charge and is encouraged to do so when~~] a fee or cost assessment, or for a reduced fee or cost assessment if it determines [~~that~~]:

(a) that waiving or reducing the fee or cost assessment is an appropriate use of taxpayer funds and resources; and

(b) that:

[~~(a)~~] (i) releasing the record primarily benefits the public rather than a person;

[~~(b)~~] (ii) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or

[~~(c)~~] (iii) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

[~~(5)~~] (4) A governmental entity may not charge a fee or assess a cost for:

(a) reviewing a [~~record~~] request for a governmental entity to determine whether [~~it~~] a single, specifically identified record is subject to disclosure[~~, except as permitted by Subsection (2)(a)(ii)~~] unless searching for, retrieving, reproducing, or classifying the record requires efforts as described in Subsection (2)(a); or

(b) inspecting a readily accessible public record.

[~~(6)~~] (5) (a) A person who believes that there has been an [~~unreasonable~~] abuse of discretion in the denial of a fee or cost waiver under [~~Subsection (4)~~] this section may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee or cost waiver or reduction is denied as it has when the inspection of a public record is denied.

[~~(7) (a) All~~] (6) The governmental entity that receives fees [~~received~~] or costs under this section [~~by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity~~] shall retain the fees as a dedicated credit[~~. (b) Those funds shall be used to recover the actual~~] in order to reimburse the governmental entity for the cost and expenses incurred by the governmental entity in providing the requested record or record series.

[~~(8)~~] (7) (a) A governmental entity may require payment of past fees or costs and future estimated fees or costs before beginning to process a request if:

(i) fees or costs are expected to exceed $50; or

(ii) the requester has not paid fees or costs from previous requests.

(b) [~~Any~~] The governmental entity shall return any prepaid amount [~~in excess of fees due shall be returned~~] that exceeds the actual fees and costs due to the requester.

[~~(9)~~] (8) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

[~~(10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).~~]

[~~(b) The lieutenant governor shall:~~]

[~~(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and~~]

[~~(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.~~]

Section 8. Section 63G-2-204 is amended to read:

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

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

(a) the person's name, mailing address, and daytime telephone number, if available; and

(b) a description of the record requested that identifies the record with reasonable specificity.

(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.

(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:

(i) deny the records request; and

(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.

(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection (6).

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

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

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

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

(c) (i) the request is for a [~~voluminous~~] substantial quantity of records or for a record series containing a substantial number of records;

(ii) the request requires the review or classification of a substantial number of records; or

[~~(ii)~~] (iii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

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

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

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

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

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

(6) If one of the extraordinary circumstances [~~listed~~] as described in Subsection (5) precludes approval or denial within the time specified in Subsection (3), the following time limits apply [~~to the extraordinary circumstances~~]:

(a) for claims under Subsection (5)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

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

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

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

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3)(a), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(9); or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

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

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

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

Section 9. Section 63G-2-206 is amended to read:

63G-2-206. Sharing records.

(1) As used in this section, "legislative entity" means:

(a) the Senate or House of Representatives;

(b) a legislative committee, legislative task force, or legislative commission;

(c) a member of the Senate or House of Representatives; or

(d) a legislative staff employee acting at the request of the Senate, House of Representatives, a legislative committee, a legislative task force, a legislative commission, or a member of the Senate or House of Representatives.

[~~(1)~~] (2) A governmental entity may provide a record [~~that is~~] that is classified as private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by [~~state statute~~] the Utah Constitution or state law to conduct an audit and the auditor determines that the record is needed for that purpose; or

(d) [~~is one that~~] collects information for presentence, probationary, or parole purposes[~~; or~~].

[~~(e) (i) is:~~]

[~~(A) the Legislature;~~]

[~~(B) a legislative committee;~~]

[~~(C) a member of the Legislature; or~~]

[~~(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and~~]

[~~(ii)~~] (3) A governmental entity may provide a record that is classified as private, controlled, or protected to a legislative entity when the legislative entity requests the record in relation to the Legislature's duties including:

[~~(A)~~] (a) the preparation or review of a legislative proposal or legislation;

[~~(B)~~] (b) appropriations; or

[~~(C)~~] (c) an investigation or review conducted by the Legislature or a legislative committee, legislative task force, or legislative commission.

[~~(2)~~] (4) (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a legislative entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(i) that the record or record series is necessary to the performance of the duties and functions of the governmental [~~entity's duties and functions~~] entity, legislative entity, political subdivision, government-managed corporation, the federal government, or the other state;

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(iii) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection [~~(6)~~] (8)(b).

[~~(3)~~] (5) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a legislative entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection [~~(1)~~] (2)(a), (b), (c), (d), (3), or [~~(e)~~] (4).

(b) Subsection [~~(3)~~] (5)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

[~~(4)~~] (6) Before disclosing a record or record series under this section to another governmental entity, a legislative entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement [~~which may be~~], either by mechanical or electronic transmission, that [~~it~~] the recipient will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

[~~(5)~~] (7) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections [~~(1)~~] (2) and [~~(2)~~] (4) without complying with the procedures of Subsection [~~(2)~~] (4) or [~~(4)~~] (6) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

[~~(6)~~] (8) (a) Subject to Subsections [~~(6)~~] (8)(b) and (c), an entity receiving a record under this section is [~~subject to~~] governed by the same restrictions on disclosure of the private, protected, or controlled record as the originating entity.

(b) A contractor or a private provider may [~~receive information~~] obtain a record or record series under this section only if the originating governmental entity determines and the contractor or private provider gives written assurance to the originating governmental entity that:

(i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series; and

(ii) the record or record series [~~it requests~~] requested by the contractor or private provider:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes[~~; and~~].

[~~(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).~~]

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

[~~(7)~~] (9) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation

prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

[~~(8)~~] (10) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining; and

(b) records of publicly funded libraries as described in [~~Subsection~~] Section 63G-2-302[~~(1)(c)~~].

[~~(9)~~] (11) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 10. Section 63G-2-301 is amended to read:

63G-2-301. Records that must be disclosed.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63G-2-305(16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in [~~Subsection 63G-2-302(1)(i)~~] Section 63G-2-302.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, official instructions to staff, and formal statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an official opinion [~~upon~~] about the rights of the state, a political subdivision, the public, or any person;

[~~(i) empirical data contained in drafts if:~~]

[~~(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and~~]

[~~(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;~~]

[~~(j)~~] (i) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

[~~(k)~~] (j) drafts that have never been finalized but were directly relied upon by the governmental entity in carrying out action or policy;

[~~(l) original data in a computer program if the governmental entity chooses not to disclose the program;~~]

[~~(m)~~] (k) arrest warrants after issuance, except that, for good cause, a court may order restricted access to an arrest [~~warrants prior to service~~] warrant before the warrant is served;

[~~(n)~~] (l) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants [~~prior to~~] before trial;

[~~(o)~~] (m) records that would disclose information relating to formal charges or formal disciplinary [~~actions~~] action against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

[~~(p)~~] (n) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

[~~(q)~~] (o) final audit reports;

[~~(r)~~] (p) occupational and professional licenses;

[~~(s)~~] (q) business licenses; and

[~~(t)~~] (r) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 11. Section 63G-2-302 is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) the Social Security number, home address, personal email address or other personal electronic or online address, personal telephone number, or personal financial information of an applicant or nominee for a position that is received by a Senate confirmation committee;

[~~(e)~~] (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual if:

(i) [~~if prior to~~] before the meeting, the chair of the committee determines that release of the records[~~: (A) reasonably~~] could be reasonably expected to interfere with the investigation undertaken by the committee[~~;~~] or [~~(B)~~] would create a danger of

depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

[~~(f)~~] (g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, personal email address or other personal electronic or online address, Social Security number, insurance coverage, marital status, or payroll deductions;

[~~(g)~~] (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

[~~(h)~~] (i) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2f-203;

[~~(i)~~] (j) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

[~~(j)~~] (k) a record that[~~: (i)~~] contains information about an individual[~~; (ii)~~], is voluntarily provided by the individual[~~;~~], and [~~(iii) goes into~~] is placed in an electronic database that:

[~~(A)~~] (i) is designated by and administered under the authority of the Chief Information Officer; and

[~~(B)~~] (ii) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

[~~(k)~~] (l) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

[~~(l)~~] (m) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

[~~(m)~~] (n) information provided by an offender that is:

(i) required by the registration requirements of Section 77-27-21.5; and

(ii) not required to be made available to the public under Subsection 77-27-21.5(27); and

[~~(n)~~] (o) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or [~~63G-2-301(3)(o)~~] (3)(m), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 12. Section 63G-2-303 is amended to read:

63G-2-303. Private information concerning certain government employees.

(1) As used in this section:

(a) "At-risk government employee" means a current or former:

(i) peace officer as specified in Section 53-13-102;

(ii) supreme court justice;

(iii) judge of an appellate, district, or juvenile court;

(iv) justice court judge;

(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

(vi) federal judge;

(vii) federal magistrate judge;

(viii) judge authorized by Armed Forces, Title 10, United States Code;

(ix) United States Attorney;

(x) Assistant United States Attorney;

(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

(xii) a law enforcement official as defined in Section 53-5-711; or

(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

(2) (a) Pursuant to ~~[Subsection 63G-2-302(1)(g)]~~ Section 63G-2-302, an at-risk government employee may file a written application that:

(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the government entity holding those records classify them as private.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5) (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) has not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or

(iii) receives a court order requiring release of the records.

Section 13. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon, a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of

government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, Office of the Utah State Auditor, or Office of Legislative Auditor General, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity [~~solely~~] in reasonable anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity [~~concerning~~] involving pending litigation or reasonably anticipated litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) [~~(i) personal files of~~] a record related to the performance of a legislator's official governmental duties that is prepared, received, or retained by a [~~state~~] legislator, including [~~personal~~] correspondence to or from a [~~member of the Legislature; and (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of~~] legislator, except that a record that provides notice of an official legislative action or policy may not be classified as protected under this [~~section~~] Subsection (19)(a); and

(b) (i) [~~an internal~~] a record disclosing a communication that is [~~part of the deliberative process in connection with the preparation of legislation~~] related to the performance of official governmental duties and that is between:

(A) [~~members of a legislative body~~] one or more legislators;

(B) [~~a member of a legislative body and a member of the legislative body's staff~~] one or more legislators and one or more legislative staff employees; or

(C) [~~members of a legislative body's staff~~] one or more legislative staff employees; and

(ii) notwithstanding Subsection (19)(b)(i), a [~~communication that gives notice of legislative action or policy~~] record that provides notice of official legislative action or policy may not be classified as protected under this [~~section~~] Subsection (19);

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a [~~particular~~] legislator's contemplated legislation or contemplated course of action [~~before the legislator has elected to support~~] until the legislation [~~or course of action~~] has been introduced, or the legislator made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator introduces the legislation or elects to make the legislation or course of action public;

(21) [~~research~~] legislator requests [~~from legislators to~~] for staff services from the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and [~~research~~] findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) reasonably anticipated or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that, if known, would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education as defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records [~~of~~] prepared, received, or retained by the governor's office, including budget recommendations, legislative proposals, internal communications, working papers, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action [~~before the governor has implemented or rejected those policies or courses of action or made them public~~];

(30) records of the Office of the Legislative Fiscal Analyst relating to:

(a) budget analysis[~~,~~];

(b) revenue estimates[~~, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas~~]; and

(c) data and working papers associated with a fiscal note for legislation until the legislation has passed;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education as defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information[~~: (A)~~] relating to research[~~; and (B) of: (I) the~~] conducted by:

(A) an institution within the state system of higher education defined in Section 53B-1-102; or

[~~(II)~~] (B) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit [~~prior to~~] before the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter [~~pursuant to~~] under Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of[~~: (i)~~] governmental property[~~; (ii)~~], governmental programs[~~;~~], or [~~(iii)~~] the property of a private person who provides information to the Division of Homeland Security [~~information~~];

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, personal email address or other personal electronic or online address, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work [~~addresses, and~~] address, telephone [~~numbers~~] number, and email address or other personal electronic or online address of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; and

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality.

Section 14. Section 63G-2-401 is amended to read:

63G-2-401. Appeal to head of governmental entity.

(1) (a) Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204[~~(7)~~](8).

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a determination on the appeal within [~~the following period of time~~]:

(i) [~~within~~] five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) [~~within~~] 12 business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by written agreement, extend the time periods specified in this section.

(6) The chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 [~~if~~] only if the person or party seeking disclosure of the record has established that, by a preponderance of the evidence, the [~~interests~~] public interest favoring access [~~outweigh the interests~~] outweighs the interest favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants.

(b) If the chief administrative officer affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) (a) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section.

(b) If a nonrequester is the only appellant, the procedures provided in this section shall apply,

except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The [~~duties of the~~] chief administrative officer may delegate the officer's duties established under this section [~~may be delegated~~].

Section 15. Section 63G-2-403 is amended to read:

63G-2-403. Appeals to the records committee.

(1) [~~A~~] Except as exempted under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, a petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the record request in whole or in part, including a denial under Subsection 63G-2-204[~~(7)~~](8);

(b) 45 days after the original request for a record if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section 63G-2-401.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the record request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than five business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed, except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) [~~(A)~~] If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

[~~(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~]

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid.

(c) The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) (a) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues.

(b) The records committee may allow other interested persons to comment on the issues.

(9) (a) [~~The~~] Subject to Subsection (9)(b), the records committee may review the disputed records. [~~However, if~~]

(b) If the records committee is weighing the various interests under Subsection (11), the committee must review the disputed records[. ~~The review shall be~~] in camera.

[~~(b)~~] (c) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The records committee's review shall be de novo.

(11) (a) No later than five business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected [~~if~~] only if the person or party seeking disclosure of the record has established that, by a preponderance of the evidence, the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) (a) If the records committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal.

(b) The petitioner shall notify the records committee in writing if the petitioner considers the appeal denied.

(14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the records committee.

(d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the governmental entity's noncompliance to[~~: (I)~~] the governor, for executive branch entities; [~~(II)~~] the Legislative Management Committee for legislative branch entities; [~~and (III)~~] or the Judicial Council, for judicial branch [~~agencies~~] entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

(15) The records committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 16. Section 63G-2-404 is amended to read:

63G-2-404. Judicial review.

(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63G-2-402(1)(b).

(b) The requester shall file a petition no later than:

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section 63G-2-401.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) (a) The district court may review the disputed records. [~~The review shall be~~]

(b) If the district court chooses to review the records, the court shall review the records in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected [~~if~~] only if the person or party seeking disclosure of the record has established that, by a preponderance of the evidence, the public interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Section 17. Section 63G-2-703 is amended to read:

63G-2-703. Applicability to the Legislature and legislative staff offices.

(1) [~~The~~] This chapter applies to the Legislature [~~and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.~~] as follows:

(a) The Legislature is subject to:

(i) Part 1, General Provisions, except the Legislative Management Committee may define terms as is necessary to establish a policy described in Subsection (2);

(ii) Part 2, Access to Records, except Sections 63G-2-203 and 63G-2-204;

(iii) Part 3, Classification, except Subsection 63G-2-307(1);

(iv) this section; and

(v) Part 8, Remedies.

[~~(2) (a)~~] (b) The Legislature [~~and its staff offices are not subject to Section 63G-2-203 or to~~] is exempt from:

(i) Part 4, Appeals[~~,~~], but shall establish a policy to provide for an appeal process;

(ii) Part 5, State Records Committee[~~, or~~], but shall establish a policy to provide for an appellate body to hear an appeal from a denial of access to a record or a dispute related to a fee and cost assessment;

(iii) Part 6, Collection of Information and Accuracy of Records[~~.~~], but shall establish a policy relating to the retention and disposition of records;

[~~(b) The Legislature is subject to only the following sections in Part 9, Archives and Records Service: Sections 63A-12-102, 63A-12-106, and 63G-2-310.~~]

(iv) Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, except for this section; and

(v) Part 9, Public Associations, except to the extent that the part may apply to legislators or legislative staff employees acting in a private capacity.

[~~(3)~~] (2) The Legislature, through the Legislative Management Committee[~~: (a)~~], shall establish policies [~~to handle requests for classification, designation,~~] relating to:

(a) receiving, processing, and responding to a record request, including time periods and procedures for the record request process;

(b) classifying or designating a record;

(c) fees[~~,~~] and costs;

(d) access[~~, denials,~~] to a record;

(e) denial of access to a record;

(f) segregation[~~,~~] of a record;

(g) appeals[~~,~~], including time periods and procedures for the appeals process;

(h) ownership, management, and retention[~~,~~] of a record; and

(i) amendment of [~~records; and~~] a record.

[~~(b) may establish an appellate board to hear appeals from denials of access.~~]

[~~(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.~~]

[~~(5)~~] (3) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, [~~Part 1, Archives and Records Service~~] Public Records Management Act.

(4) The Legislature is not subject to Title 63A, Chapter 12, Public Records Management Act, except for compliance with Sections 63A-12-102 and 63A-12-106.

Section 18. Section 63G-2-803 is amended to read:

63G-2-803. No individual liability for certain decisions of a governmental entity.

(1) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages resulting from the release of a record where the person or [~~government~~] governmental entity requesting the record presented evidence of authority to obtain the record, even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under [~~Subsection 63G-2-302(1)(f)~~] Section 63G-2-302 unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and[~~: (i)~~] the government entity did not take reasonable steps to preclude access or distribution of the record[~~; or (ii)~~] or the release of the record was otherwise willfully or grossly negligent.

(3) A mailing from a government agency to an individual who has filed an application under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A, Chapter 12, [~~Archives and Records Service~~] Public Records Management Act.

Section 19. Repealer.

This bill repeals:

Section 63G-2-102, Legislative intent.

Section 20. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 17
S. B. 165
Passed March 9, 2011
Approved March 10, 2011
Effective March 10, 2011

ELECTION LAW AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill amends provisions in Title 20A, Election Code.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes a person to vote in an election if the person registers online to vote at least 15 days before an election;
- authorizes the chief election officer to extend the time to file a financial statement in certain circumstances;
- prohibits the use of an electronic signature and requires the use of a holographic signature to:
  - qualify a candidate for the ballot;
  - qualify a ballot proposition for the ballot; or
  - sign a petition to organize and register a political party;
- requires an estimate of the cost of printing and distributing information related to a petition;
- prohibits a person from verifying the person's own signature;
- prohibits a county clerk from certifying a signature on a packet that is not verified;
- requires the county clerk to compare a signature on a packet to the voter registration database;
- authorizes the lieutenant governor or county clerk to declare a petition insufficient if all the requirements are not met;
- prohibits the sponsors of a local initiative from submitting additional signatures to qualify for a ballot in subsequent elections;
- repeals a section regarding a financial report;
- establishes the time by which a petitioner shall deliver petition packets to the county clerk and qualify a petition for the ballot;
- requires the amount of signatures necessary for an initiative or referendum to be submitted to a legislative body or qualify for placement on the ballot to be calculated based on the votes cast for President of the United States;
- clarifies when a local law subject to a referendum takes effect; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

20A-1-102, as last amended by Laws of Utah 2010, Chapters 129, 197, and 254
20A-2-102.5, as last amended by Laws of Utah 2008, Chapter 225
20A-2-206, as enacted by Laws of Utah 2009, Chapter 89
20A-3-304, as last amended by Laws of Utah 2009, Chapter 191
20A-7-101, as last amended by Laws of Utah 2010, Chapter 294
20A-7-201, as last amended by Laws of Utah 2008, Chapter 237
20A-7-202, as last amended by Laws of Utah 2008, Chapter 237
20A-7-202.5, as last amended by Laws of Utah 2010, Chapter 367
20A-7-203, as last amended by Laws of Utah 2007, Chapter 78
20A-7-205, as last amended by Laws of Utah 2010, Chapter 225
20A-7-206, as last amended by Laws of Utah 2010, Chapter 225
20A-7-206.3, as last amended by Laws of Utah 2007, Chapter 78
20A-7-207, as last amended by Laws of Utah 2010, Chapters 225 and 367
20A-7-301, as last amended by Laws of Utah 1995, Chapter 153
20A-7-305, as last amended by Laws of Utah 2010, Chapter 225
20A-7-306, as last amended by Laws of Utah 2010, Chapter 225
20A-7-306.3, as enacted by Laws of Utah 2007, Chapter 78
20A-7-307, as last amended by Laws of Utah 2010, Chapter 225
20A-7-501, as last amended by Laws of Utah 2010, Chapter 324
20A-7-502.5, as last amended by Laws of Utah 2010, Chapter 367
20A-7-503, as last amended by Laws of Utah 2008, Chapter 225
20A-7-505, as last amended by Laws of Utah 2000, Chapter 3
20A-7-506, as last amended by Laws of Utah 2008, Chapter 237
20A-7-506.3, as last amended by Laws of Utah 2007, Chapter 78
20A-7-507, as last amended by Laws of Utah 2002, Chapter 133
20A-7-601, as last amended by Laws of Utah 2004, Chapter 258
20A-7-605, as last amended by Laws of Utah 2000, Chapter 3
20A-7-606, as last amended by Laws of Utah 2008, Chapter 237
20A-7-606.3, as enacted by Laws of Utah 2007, Chapter 78
20A-7-607, as last amended by Laws of Utah 1995, Chapter 165
20A-7-609, as last amended by Laws of Utah 2010, Chapter 294
20A-8-103, as last amended by Laws of Utah 1999, Chapter 45
20A-9-203, as last amended by Laws of Utah 2010, Chapter 197
20A-9-404, as last amended by Laws of Utah 2007, Chapter 256

20A-9-502, as last amended by Laws of Utah 2009, Chapter 202
20A-11-103, as last amended by Laws of Utah 2010, Chapter 389

ENACTS:
20A-1-306, Utah Code Annotated 1953

REPEALS:
20A-7-206.5, as enacted by Laws of Utah 1999, Chapter 109

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

Section 1. Section 20A-1-102 is amended to read:

20A-1-102. Definitions.

As used in this title:

(1) "Active voter" means a registered voter who has not been classified as an inactive voter by the county clerk.

(2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot sheets and tabulates the results.

(3) (a) "Ballot" means the storage medium, whether paper, mechanical, or electronic, upon which a voter records the voter's votes.

(b) "Ballot" includes ballot sheets, paper ballots, electronic ballots, and secrecy envelopes.

(4) "Ballot sheet":

(a) means a ballot that:

(i) consists of paper or a card where the voter's votes are marked or recorded; and

(ii) can be counted using automatic tabulating equipment; and

(b) includes punch card ballots and other ballots that are machine-countable.

(5) "Ballot label" means the cards, papers, booklet, pages, or other materials that:

(a) contain the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) are used in conjunction with ballot sheets that do not display that information.

(6) "Ballot proposition" means a question, issue, or proposal that is submitted to voters on the ballot for their approval or rejection including:

(a) an opinion question specifically authorized by the Legislature;

(b) a constitutional amendment;

(c) an initiative;

(d) a referendum;

(e) a bond proposition;

(f) a judicial retention question; or

(g) any other ballot question specifically authorized by the Legislature.

(7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(8) "Bond election" means an election held for the purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(12) "Canvassing judge" means a poll worker designated to assist in counting ballots at the canvass.

(13) "Convention" means the political party convention at which party officers and delegates are selected.

(14) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(15) "Counting judge" means a poll worker designated to count the ballots during election day.

(16) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(17) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the poll workers and counting judges to count ballots during election day.

(18) "County officers" means those county officers that are required by law to be elected.

(19) "Date of the election" or "election day" or "day of the election":

(a) means the day that is specified in the calendar year as the day that the election occurs; and

(b) does not include:

(i) deadlines established for absentee voting; or

(ii) any early voting or early voting period as provided under Chapter 3, Part 6, Early Voting.

(20) "Election" means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, and a local district election.

(21) "Election Assistance Commission" means the commission established by Public Law 107-252, the Help America Vote Act of 2002.

(22) "Election cycle" means the period beginning on the first day persons are eligible to file

declarations of candidacy and ending when the canvass is completed.

(23) "Election judge" means a poll worker that is assigned to:

(a) preside over other poll workers at a polling place;

(b) act as the presiding election judge; or

(c) serve as a canvassing judge, counting judge, or receiving judge.

(24) "Election officer" means:

(a) the lieutenant governor, for all statewide ballots;

(b) the county clerk or clerks for all county ballots and for certain ballots and elections as provided in Section 20A-5-400.5;

(c) the municipal clerk for all municipal ballots and for certain ballots and elections as provided in Section 20A-5-400.5;

(d) the local district clerk or chief executive officer for certain ballots and elections as provided in Section 20A-5-400.5; and

(e) the business administrator or superintendent of a school district for certain ballots or elections as provided in Section 20A-5-400.5.

(25) "Election official" means any election officer, election judge, or poll worker.

(26) "Election results" means, for bond elections, the count of those votes cast for and against the bond proposition plus any or all of the election returns that the board of canvassers may request.

(27) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

(28) "Electronic ballot" means a ballot that is recorded using a direct electronic voting device or other voting device that records and stores ballot information by electronic means.

(29) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

[~~(29)~~] (30) (a) "Electronic voting device" means a voting device that uses electronic ballots.

(b) "Electronic voting device" includes a direct recording electronic voting device.

[~~(30)~~] (31) "Inactive voter" means a registered voter who has:

(a) been sent the notice required by Section 20A-2-306; and

(b) failed to respond to that notice.

[~~(31)~~] (32) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

[~~(32)~~] (33) "Judicial office" means the office filled by any judicial officer.

[~~(33)~~] (34) "Judicial officer" means any justice or judge of a court of record or any county court judge.

[~~(34)~~] (35) "Local district" means a local government entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.

[~~(35)~~] (36) "Local district officers" means those local district officers that are required by law to be elected.

[~~(36)~~] (37) "Local election" means a regular municipal election, a local special election, a local district election, and a bond election.

[~~(37)~~] (38) "Local political subdivision" means a county, a municipality, a local district, or a local school district.

[~~(38)~~] (39) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

[~~(39)~~] (40) "Municipal executive" means:

(a) the mayor in the council-mayor form of government defined in Section 10-3b-102; or

(b) the mayor in the council-manager form of government defined in Subsection 10-3b-103(6).

[~~(40)~~] (41) "Municipal general election" means the election held in municipalities and local districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

[~~(41)~~] (42) "Municipal legislative body" means the council of the city or town in any form of municipal government.

[~~(42)~~] (43) "Municipal officers" means those municipal officers that are required by law to be elected.

[~~(43)~~] (44) "Municipal primary election" means an election held to nominate candidates for municipal office.

[~~(44)~~] (45) "Official ballot" means the ballots distributed by the election officer to the poll workers to be given to voters to record their votes.

[~~(45)~~] (46) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) the facsimile signature of the election officer; and

(b) the information on the ballot stub that identifies:

(i) the poll worker's initials; and

(ii) the ballot number.

[~~(46)~~] (47) "Official register" means the official record furnished to election officials by the election officer that contains the information required by Section 20A-5-401.

[~~(47)~~] (48) "Paper ballot" means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record the voter's vote for each office and for or against each ballot proposition.

[~~(48)~~] (49) "Political party" means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Chapter 8, Political Party Formation and Procedures.

[~~(49)~~] (50) (a) "Poll worker" means a person assigned by an election official to assist with an election, voting, or counting votes.

(b) "Poll worker" includes election judges.

(c) "Poll worker" does not include a watcher.

[~~(50)~~] (51) "Pollbook" means a record of the names of voters in the order that they appear to cast votes.

[~~(51)~~] (52) "Polling place" means the building where voting is conducted.

[~~(52)~~] (53) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks the voter's choice.

[~~(53)~~] (54) "Provisional ballot" means a ballot voted provisionally by a person:

(a) whose name is not listed on the official register at the polling place;

(b) whose legal right to vote is challenged as provided in this title; or

(c) whose identity was not sufficiently established by a poll worker.

[~~(54)~~] (55) "Provisional ballot envelope" means an envelope printed in the form required by Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify a person's legal right to vote.

[~~(55)~~] (56) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

[~~(56)~~] (57) "Protective counter" means a separate counter, which cannot be reset, that:

(a) is built into a voting machine; and

(b) records the total number of movements of the operating lever.

[~~(57)~~] (58) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

[~~(58)~~] (59) "Receiving judge" means the poll worker that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

[~~(59)~~] (60) "Registration form" means a book voter registration form and a by-mail voter registration form.

[~~(60)~~] (61) "Regular ballot" means a ballot that is not a provisional ballot.

[~~(61)~~] (62) "Regular general election" means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

[~~(62)~~] (63) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, to nominate candidates of political parties and nonpolitical groups to advance to the regular general election.

[~~(63)~~] (64) "Resident" means a person who resides within a specific voting precinct in Utah.

[~~(64)~~] (65) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

[~~(65)~~] (66) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

[~~(66)~~] (67) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after the voter has voted it in order to preserve the secrecy of the voter's vote.

[~~(67)~~] (68) "Special election" means an election held as authorized by Section 20A-1-204.

[~~(68)~~] (69) "Spoiled ballot" means each ballot that:

(a) is spoiled by the voter;

(b) is unable to be voted because it was spoiled by the printer or a poll worker; or

(c) lacks the official endorsement.

[~~(69)~~] (70) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

[~~(70)~~] (71) "Stub" means the detachable part of each ballot.

[~~(71)~~] (72) "Substitute ballots" means replacement ballots provided by an election officer to the poll workers when the official ballots are lost or stolen.

[~~(72)~~] (73) "Ticket" means each list of candidates for each political party or for each group of petitioners.

[~~(73)~~] (74) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

[~~(74)~~] (75) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

[~~(75)~~] (76) "Valid voter identification" means:

(a) a form of identification that bears the name and photograph of the voter which may include:

(i) a currently valid Utah driver license;

(ii) a currently valid identification card that is issued by:

(A) the state; or

(B) a branch, department, or agency of the United States;

(iii) a currently valid Utah permit to carry a concealed weapon;

(iv) a currently valid United States passport; or

(v) a currently valid United States military identification card;

(b) one of the following identification cards, whether or not the card includes a photograph of the voter:

(i) a valid tribal identification card;

(ii) a Bureau of Indian Affairs card; or

(iii) a tribal treaty card; or

(c) two forms of identification not listed under Subsection [~~(75)~~] (76)(a) or (b) but that bear the name of the voter and provide evidence that the voter resides in the voting precinct, which may include:

(i) a current utility bill or a legible copy thereof, dated within the 90 days before the election;

(ii) a bank or other financial account statement, or a legible copy thereof;

(iii) a certified birth certificate;

(iv) a valid Social Security card;

(v) a check issued by the state or the federal government or a legible copy thereof;

(vi) a paycheck from the voter's employer, or a legible copy thereof;

(vii) a currently valid Utah hunting or fishing license;

(viii) certified naturalization documentation;

(ix) a currently valid license issued by an authorized agency of the United States;

(x) a certified copy of court records showing the voter's adoption or name change;

(xi) a valid Medicaid card, Medicare card, or Electronic Benefits Transfer Card;

(xii) a currently valid identification card issued by:

(A) a local government within the state;

(B) an employer for an employee; or

(C) a college, university, technical school, or professional school located within the state; or

(xiii) a current Utah vehicle registration.

[~~(76)~~] (77) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

[~~(77)~~] (78) "Voter" means a person who:

(a) meets the requirements for voting in an election;

(b) meets the requirements of election registration;

(c) is registered to vote; and

(d) is listed in the official register book.

[~~(78)~~] (79) "Voter registration deadline" means the registration deadline provided in Section 20A-2-102.5.

[~~(79)~~] (80) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

[~~(80)~~] (81) "Voting booth" means:

(a) the space or compartment within a polling place that is provided for the preparation of ballots, including the voting machine enclosure or curtain; or

(b) a voting device that is free standing.

[~~(81)~~] (82) "Voting device" means:

(a) an apparatus in which ballot sheets are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance;

(c) an electronic voting device or other device used to make selections and cast a ballot electronically, or any component thereof;

(d) an automated voting system under Section 20A-5-302; or

(e) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

[~~(82)~~] (83) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

[~~(83)~~] (84) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

[~~(84)~~] (85) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

[~~(85)~~] (86) "Watcher" means a voting poll watcher, a counting poll watcher, an inspecting poll watcher, and a testing watcher.

[~~(86)~~] (87) "Western States Presidential Primary" means the election established in [~~Title 20A,~~] Chapter 9, Part 8.

[~~(87)~~] (88) "Write-in ballot" means a ballot containing any write-in votes.

[~~(88)~~] (89) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 2. Section 20A-1-306 is enacted to read:

20A-1-306. Electronic signatures prohibited.

Notwithstanding Title 46, Chapter 4, Uniform Electronic Transactions Act, and Subsections 68-3-12(1)(e) and 68-3-12.5(24) and (33), an electronic signature may not be used to sign a petition to:

(1) qualify a ballot proposition for the ballot under Chapter 7, Issues Submitted to the Voters;

(2) organize and register a political party under Chapter 8, Political Party Formation and Procedures; or

(3) qualify a candidate for the ballot under Chapter 9, Candidate Qualifications and Nominating Procedures.

Section 3. Section 20A-2-102.5 is amended to read:

20A-2-102.5. Voter registration deadline.

(1) Except as provided in [~~Section~~] Sections 20A-2-201 and 20A-2-206 and [~~in Title 20A,~~] Chapter 3, Part 4, Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person who fails to submit a correctly completed voter registration form on or before the voter registration deadline shall not be permitted to vote in the election.

(2) The voter registration deadline shall be the date that is 30 calendar days before the date of the election.

Section 4. Section 20A-2-206 is amended to read:

20A-2-206. Electronic registration -- Requests for absentee ballot application.

(1) The lieutenant governor may create and maintain an electronic system for voter registration and requesting an absentee ballot that is publicly available on the Internet.

(2) An electronic system for voter registration shall require:

(a) that an applicant have a valid driver license or identification card, issued under Title 53, Chapter 3, Uniform Driver License Act, that reflects the person's current principal place of residence;

(b) that the applicant provide the information required by Section 20A-2-104, except that the applicant's signature may be obtained in the manner described in Subsections (2)(d) and (4);

(c) that the applicant attest to the truth of the information provided; and

(d) that the applicant authorize the lieutenant governor's and county clerk's use of the applicant's driver license or identification card signature, obtained under Title 53, Chapter 3, Uniform Driver License Act, for voter registration purposes.

(3) Notwithstanding Section 20A-2-104, an applicant using the electronic system for voter registration created under this section is not required to complete a printed registration form.

(4) A system created and maintained under this section shall provide the notices concerning a voter's presentation of identification contained in Subsection 20A-2-104(1).

(5) The lieutenant governor shall obtain a digital copy of the applicant's driver license or identification card signature from the Driver License Division.

(6) Upon receiving all information from an applicant and the Driver License Division, the lieutenant governor shall send the information to the county clerk for the county in which the applicant's principal place of residence is found for further action as required by Section 20A-2-304.

(7) The lieutenant governor may use additional security measures to ensure the accuracy and integrity of an electronically submitted voter registration.

(8) (a) If an individual applies to register under this section during the period beginning on the date after the voter registration deadline and ending on the date that is 15 calendar days before the date of an election, the county clerk shall:

(i) accept the application for registration if the individual, on the date of the election, will be legally qualified and entitled to vote in a voting precinct in the state; and

(ii) inform the individual that:

(A) the individual is registered to vote in the pending election; and

(B) for the pending election, the individual must vote on the day of the election and is not eligible to vote using early voting under Chapter 3, Part 6, Early Voting, because the individual registered too late.

(b) If an individual applies to register under this section during the 14 calendar days before an election, the county clerk shall:

(i) accept the application for registration if the individual, on the date of the election, will be legally

qualified and entitled to vote in a voting precinct in the state; and

(ii) inform the individual that the individual is registered to vote but may not vote in the pending election because the individual registered too late.

(9) (a) A registered voter may file an application for an absentee ballot in accordance with Section 20A-3-304 on the electronic system for voter registration established under this section.

(b) The lieutenant governor shall provide a means by which a registered voter shall sign the application form as provided in Section 20A-3-304.

Section 5. Section 20A-3-304 is amended to read:

20A-3-304. Application for absentee ballot -- Time for filing and voting.

(1) Any registered voter who wishes to vote an absentee ballot may either:

(a) file an absentee ballot application:

(i) on the electronic system maintained by the lieutenant governor under Section 20A-2-206; or

(ii) with the appropriate election officer for an official absentee ballot as provided in this section; or

(b) vote in person at the office of the appropriate election officer as provided in Section 20A-3-306.

(2) (a) Except as provided in Subsection (2)(b), [~~each~~] the lieutenant governor or election officer shall prepare [~~blank applications~~] an application form for absentee ballot applications in substantially the following form:

"I, ____, a qualified elector, residing at ____ Street, ____ City, ____ County, Utah apply for an official absentee ballot to be voted by me at the election.

Date _____ (month\day\year) Signed _____
Voter"

(b) [~~Each~~] The lieutenant governor or election officer shall prepare blank applications for absentee ballot applications for regular primary elections and for the Western States Presidential Primary in substantially the following form:

"I, ____, a qualified elector, residing at ____ Street, ____ City, ____ County, Utah apply for an official absentee ballot for the _____ political party to be voted by me at the primary election.

I understand that I must be affiliated with or authorized to vote the political party's ballot that I request.

Dated _____ (month\day\year) ____
Signed _____
Voter"

(c) If requested by the applicant, the election officer shall:

(i) mail or fax the application blank to the absentee voter; or

(ii) deliver the application blank to any voter who personally applies for it at the office of the election officer.

(3) (a) Except as provided in Subsection (3)(b), a voter who wishes to vote by absentee ballot shall file the application for an absentee ballot with the lieutenant governor or appropriate election officer no later than the Friday before election day.

(b) Overseas applicants shall file their applications with the appropriate election officer no later than 20 days before election day.

(4) (a) A county clerk may establish a permanent absentee voter list.

(b) The clerk shall place on the list the name of any person who:

(i) requests permanent absentee voter status; and

(ii) meets the requirements of this section.

(c) (i) Each year, the clerk shall mail a questionnaire to each person whose name is on the absentee voter list.

(ii) The questionnaire shall allow the absentee person to verify the voter's residence.

(iii) The clerk may remove the names of any voter from the absentee voter registration list if:

(A) the voter is no longer listed in the official register; or

(B) the voter fails to verify the voter's residence and absentee status.

(d) The clerk shall provide a copy of the permanent absentee voter list to election officers for use in elections.

Section 6. Section 20A-7-101 is amended to read:

20A-7-101. Definitions.

As used in this chapter:

(1) "Budget officer" means:

(a) for a county, the person designated as budget officer in Section 17-19-19;

(b) for a city, the person designated as budget officer in Subsection 10-6-106(5); or

(c) for a town, the town council.

(2) "Certified" means that the county clerk has acknowledged a signature as being the signature of a registered voter.

(3) "Circulation" means the process of submitting an initiative or referendum petition to legal voters for their signature.

(4) "Final fiscal impact statement" means a financial statement prepared after voters approve an initiative that contains the information required by Subsection 20A-7-202.5(2) or 20A-7-502.5(2).

(5) "Initial fiscal impact estimate" means a financial statement prepared according to the terms of Section 20A-7-202.5 or 20A-7-502.5 after the filing of an application for an initiative petition.

(6) "Initiative" means a new law proposed for adoption by the public as provided in this chapter.

(7) "Initiative packet" means a copy of the initiative petition, a copy of the proposed law, and the signature sheets, all of which have been bound together as a unit.

(8) "Legal signatures" means the number of signatures of legal voters that:

(a) meet the numerical requirements of this chapter; and

(b) have been certified and verified as provided in this chapter.

(9) "Legal voter" means a person who:

(a) is registered to vote; or

(b) becomes registered to vote before the county clerk certifies the signatures on an initiative or referendum petition.

(10) "Local attorney" means the county attorney, city attorney, or town attorney in whose jurisdiction a local initiative or referendum petition is circulated.

(11) "Local clerk" means the county clerk, city recorder, or town clerk in whose jurisdiction a local initiative or referendum petition is circulated.

(12) (a) "Local law" includes an ordinance, resolution, master plan, and any comprehensive zoning regulation adopted by ordinance or resolution.

(b) "Local law" does not include an individual property zoning decision.

(13) "Local legislative body" means the legislative body of a county, city, or town.

(14) "Measure" means a proposed constitutional amendment, an initiative, or referendum.

(15) "Referendum" means a process by which a law passed by the Legislature or by a local legislative body is submitted or referred to the voters for their approval or rejection.

(16) "Referendum packet" means a copy of the referendum petition, a copy of the law being submitted or referred to the voters for their approval or rejection, and the signature sheets, all of which have been bound together as a unit.

(17) (a) "Signature" means a holographic signature.

(b) "Signature" does not mean an electronic signature.

[~~(17)~~] (18) "Signature sheets" means sheets in the form required by this chapter that are used to collect signatures in support of an initiative or referendum.

[~~(18)~~] (19) "Sponsors" means the legal voters who support the initiative or referendum and who sign the application for petition copies.

[~~(19)~~] (20) "Sufficient" means that the signatures submitted in support of an initiative or referendum petition have been certified and verified as required by this chapter.

[~~(20)~~] (21) "Verified" means acknowledged by the person circulating the petition as required in Sections 20A-7-205 and 20A-7-305.

Section 7. Section 20A-7-201 is amended to read:

20A-7-201. Statewide initiatives -- Signature requirements -- Submission to the Legislature or to a vote of the people.

(1) (a) A person seeking to have an initiative submitted to the Legislature for approval or rejection shall obtain:

(i) legal signatures equal to 5% of the cumulative total of all votes cast by voters of this state for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected; and

(ii) from each of at least 26 Utah State Senate districts, legal signatures equal to 5% of the total of all votes cast in that district for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected.

(b) If, at any time not less than 10 days before the beginning of [~~an~~] the next annual general session of the Legislature, immediately after the application is filed under Section 20A-7-202 and specified on the petition under Section 20A-7-203 the lieutenant governor declares sufficient any initiative petition that is signed by enough voters to meet the requirements of this Subsection (1), the lieutenant governor shall deliver a copy of the petition and the cover sheet required by Subsection (1)(c) to the president of the Senate, the speaker of the House, and the director of the Office of Legislative Research and General Counsel.

(c) In delivering a copy of the petition, the lieutenant governor shall include a cover sheet that contains:

(i) the cumulative total of all votes cast by voters of this state for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected;

(ii) the total of all votes cast in each Utah State Senate district for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected;

(iii) the total number of certified signatures received for the submitted initiative; and

(iv) the total number of certified signatures received from each Utah State Senate district for the submitted initiative.

(2) (a) A person seeking to have an initiative submitted to a vote of the people for approval or rejection shall obtain:

(i) legal signatures equal to 10% of the cumulative total of all votes cast by voters of this state for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected; and

(ii) from each of at least 26 Utah State Senate districts, legal signatures equal to 10% of the total of all votes cast in that district for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected.

(b) If an initiative petition meets the requirements of this part and the lieutenant governor declares the initiative petition to be sufficient, the lieutenant governor shall submit the proposed law to a vote of the people at the next regular general election:

(i) immediately after the application is filed under Section 20A-7-202; and

(ii) specified on the petition under Section 20A-7-203.

(3) The lieutenant governor shall provide the following information from the official canvass of the last regular general election at which a [~~governor~~] President of the United States was elected to any interested person:

(a) the cumulative total of all votes cast by voters in this state for all candidates for [~~governor~~] President of the United States; and

(b) for each Utah State Senate district, the total of all votes cast in that district for all candidates for [~~governor~~] President of the United States.

Section 8. Section 20A-7-202 is amended to read:

20A-7-202. Statewide initiative process -- Application procedures -- Time to gather signatures -- Grounds for rejection.

(1) Persons wishing to circulate an initiative petition shall file an application with the lieutenant governor.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a resident of Utah; and

(ii) has voted in a regular general election in Utah within the last three years;

(c) the signature of each of the sponsors, attested to by a notary public;

(d) a copy of the proposed law that includes:

(i) the title of the proposed law, which clearly expresses the subject of the law; and

(ii) the text of the proposed law; and

(e) a statement indicating whether or not persons gathering signatures for the petition may be paid for doing so.

(3) The application and its contents are public when filed with the lieutenant governor.

[~~(4) (a) The sponsors shall qualify the petition for the regular general election ballot no later than one year after the application is filed.~~]

[~~(b)~~] (4) If the [~~sponsors fail~~] petition fails to qualify [~~the petition for that~~] for the ballot of the election described in Subsection 20A-7-201(2)(b), the sponsors must:

[~~(i)~~] (a) submit a new application;

[~~(ii)~~] (b) obtain new signature sheets; and

[~~(iii)~~] (c) collect signatures again.

(5) The lieutenant governor shall reject the application and not issue circulation sheets if:

(a) the law proposed by the initiative is patently unconstitutional;

(b) the law proposed by the initiative is nonsensical;

(c) the proposed law could not become law if passed;

(d) the law contains more than one subject;

(e) the subject of the law is not clearly expressed in the law's title; or

(f) the law proposed by the initiative is identical or substantially similar to a law proposed by an initiative that was submitted to the county clerks and lieutenant governor for certification and evaluation within two years preceding the date on which the application for this initiative was filed.

Section 9. Section 20A-7-202.5 is amended to read:

20A-7-202.5. Initial fiscal impact estimate -- Preparation of estimate -- Challenge to estimate.

(1) Within three working days of receipt of an application for an initiative petition, the lieutenant governor shall submit a copy of the application to the Governor's Office of Planning and Budget.

(2) (a) The Governor's Office of Planning and Budget shall prepare an unbiased, good faith estimate of the fiscal impact of the law proposed by the initiative that contains:

(i) a dollar amount representing the total estimated fiscal impact of the proposed law;

(ii) if the proposed law would increase or decrease taxes, a dollar amount representing the total estimated increase or decrease for each type of tax affected under the proposed law and a dollar

amount representing the total estimated increase or decrease in taxes under the proposed law;

(iii) if the proposed law would result in the issuance or a change in the status of bonds, notes, or other debt instruments, a dollar amount representing the total estimated increase or decrease in public debt under the proposed law;

(iv) a listing of all sources of funding for the estimated costs associated with the proposed law showing each source of funding and the percentage of total funding provided from each source;

(v) a dollar amount representing the estimated costs or savings, if any, to state and local government entities under the proposed law; and

(vi) a concise explanation, not exceeding 100 words, of the above information and of the estimated fiscal impact, if any, under the proposed law.

(b) (i) If the proposed law is estimated to have no fiscal impact, the Governor's Office of Planning and Budget shall include a summary statement in the initial fiscal impact statement in substantially the following form:

"The Governor's Office of Planning and Budget estimates that the law proposed by this initiative would have no significant fiscal impact and would not result in either an increase or decrease in taxes or debt."

(ii) If the proposed law is estimated to have a fiscal impact, the Governor's Office of Planning and Budget shall include a summary statement in the initial fiscal impact estimate in substantially the following form:

"The Governor's Office of Planning and Budget estimates that the law proposed by this initiative would result in a total fiscal expense/savings of $_____, which includes a (type of tax or taxes) tax increase/decrease of $_____ and a $_____ increase/decrease in state debt."

(iii) If the estimated fiscal impact of the proposed law is highly variable or is otherwise difficult to reasonably express in a summary statement, the Governor's Office of Planning and Budget may include in the summary statement a brief explanation that identifies those factors affecting the variability or difficulty of the estimate.

(3) The Governor's Office of Planning and Budget shall prepare an unbiased, good faith estimate of the cost of printing and distributing information related to the initiative petition in:

(a) the voter information pamphlet as required by Title 20A, Chapter 7, Part 7, Voter Information Pamphlet; or

(b) the newspaper, as required by Section 20A-7-702.

[~~(3)~~] (4) Within 25 calendar days from the date that the lieutenant governor delivers a copy of the application, the Governor's Office of Planning and Budget shall:

(a) deliver a copy of the initial fiscal impact estimate to the lieutenant governor's office; and

(b) mail a copy of the initial fiscal impact estimate to the first five sponsors named in the initiative application.

[~~(4)~~] (5) (a) (i) Three or more of the sponsors of the petition may, within 20 calendar days of the date of delivery of the initial fiscal impact estimate to the lieutenant governor's office, file a petition with the Supreme Court, alleging that the initial fiscal impact estimate, taken as a whole, is an inaccurate estimate of the fiscal impact of the initiative.

(ii) After receipt of the appeal, the Supreme Court shall direct the lieutenant governor to send notice of the petition to:

(A) any person or group that has filed an argument with the lieutenant governor's office for or against the measure that is the subject of the challenge; and

(B) any political issues committee established under Section 20A-11-801 that has filed written or electronic notice with the lieutenant governor that identifies the name, mailing or email address, and telephone number of the person designated to receive notice about any issues relating to the initiative.

(b) (i) There is a presumption that the initial fiscal impact estimate prepared by the Governor's Office of Planning and Budget is based upon reasonable assumptions, uses reasonable data, and applies accepted analytical methods to present the estimated fiscal impact of the initiative.

(ii) The Supreme Court may not revise the contents of, or direct the revision of, the initial fiscal impact estimate unless the plaintiffs rebut the presumption by clear and convincing evidence that establishes that the initial fiscal estimate, taken as a whole, is an inaccurate statement of the estimated fiscal impact of the initiative.

(iii) The Supreme Court may refer an issue related to the initial fiscal impact estimate to a master to examine the issue and make a report in accordance with Utah Rules of Civil Procedure, Rule 53.

(c) The Supreme Court shall certify to the lieutenant governor a fiscal impact estimate for the measure that meets the requirements of this section.

Section 10. Section 20A-7-203 is amended to read:

20A-7-203. Form of initiative petition and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

"INITIATIVE PETITION To the Honorable ____, Lieutenant Governor:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to the legal voters/Legislature of Utah for their/its approval or rejection at the

regular general election/session to be held/ beginning on _____(month\day\year);

Each signer says:

I have personally signed this petition;

I am registered to vote in Utah or intend to become registered to vote in Utah before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name.

NOTICE TO SIGNERS:

Public hearings to discuss this petition were held at: (list dates and locations of public hearings.)"

(b) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

(a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line;

(d) contain the initial fiscal impact estimate's summary statement issued by the Governor's Office of Planning and Budget according to Subsection 20A-7-202.5(2)(b) and the cost estimate for printing and distributing information related to the initiative petition according to Subsection 20A-7-202.5(3), printed or typed in not less than 12-point, bold type, at the top of each signature sheet under the title of the initiative;

(e) contain the word "Warning" printed or typed at the top of each signature sheet under the initial fiscal impact estimate's summary statement;

(f) contain, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single leaded type:

"It is a class A misdemeanor for anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign an initiative petition when he knows he is not a registered voter and knows that he does not intend to become registered to vote before the certification of the petition names by the county clerk."; and

(g) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be 5/8 inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;

(ii) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be 2-1/2 inches wide, headed "Signature of Registered Voter";

(iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)";

(v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code"; and

(vi) at the bottom of the sheet, contain the following statement: "Birth date or age information is not required, but it may be used to verify your identity with voter registration records. If you choose not to provide it, your signature may not be verified as a valid signature if you change your address before petition signatures are verified or if the information you provide does not match your voter registration records."

(3) The final page of each initiative packet shall contain the following printed or typed statement:

"Verification

State of Utah, County of ____

I, _____, of ____, hereby state that:

I am a resident of Utah and am at least 18 years old;

All the names that appear in this packet were signed by persons who professed to be the persons whose names appear in it, and each of them signed his name on it in my presence;

I believe that each has printed and signed his name and written his post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

I have not paid or given anything of value to any person who signed this petition to encourage that person to sign it.

_____

(Name) (Residence Address) (Date)"

(4) The forms prescribed in this section are not mandatory, and, if substantially followed, the initiative petitions are sufficient, notwithstanding clerical and merely technical errors.

Section 11. Section 20A-7-205 is amended to read:

20A-7-205. Obtaining signatures -- Verification -- Removal of signature.

(1) A Utah voter may sign an initiative petition if the voter is a legal voter.

(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

[~~(a)~~] (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and

[~~(b)~~] (ii) verifies each signature sheet by completing the verification printed on the last page of each initiative packet.

(b) A person may not sign the verification printed on the last page of the initiative packet if the person signed a signature sheet in the initiative packet.

(3) (a) A voter who has signed an initiative petition may have the voter's signature removed from the petition by submitting to the county clerk a statement requesting that the voter's signature be removed.

(b) The statement shall include:

(i) the name of the voter;

(ii) the resident address at which the voter is registered to vote;

(iii) the last four digits of the voter's Social Security number;

(iv) the driver license or identification card number; and

(v) the signature of the voter.

(c) A voter may not submit a statement by email or other electronic means.

(d) In order for the signature to be removed, the statement must be received by the county clerk before May 15.

(e) The county clerk shall deliver all statements received under this Subsection (3):

(i) with the initiative petition packets delivered to the lieutenant governor; or

(ii) in a supplemental delivery to the lieutenant governor for a statement submitted after the county clerk delivered the initiative packets.

(f) A person may only remove a signature from an initiative petition in accordance with this Subsection (3).

Section 12. Section 20A-7-206 is amended to read:

20A-7-206. Submitting the initiative petition -- Certification of signatures by the county clerks -- Transfer to lieutenant governor.

(1) (a) In order to qualify an initiative petition for placement on the regular general election ballot, the sponsors shall deliver each signed and verified initiative packet to the county clerk of the county in which the packet was circulated [~~no later than~~] on or before the sooner of:

(i) 316 days after the day on which the application is filed; or

(ii) the April 15 immediately before the next regular general election immediately after the application is filed under Section 20A-7-202.

(b) A sponsor may not submit an initiative packet after the deadline established in this Subsection (1).

(2) (a) No later than May 1 before the regular general election, the county clerk shall:

[~~(a)~~] (i) check the names of all persons completing the verification for the initiative packet to determine whether [~~or not~~] those persons are residents of Utah and are at least 18 years old; and

[~~(b)~~] (ii) submit the name of each of those persons who is not a Utah resident or who is not at least 18 years old to the attorney general and county attorney.

(b) The county clerk may not certify a signature under Subsection (3) on an initiative packet that is not verified in accordance with Section 20A-7-205.

(3) No later than May 15 before the regular general election, the county clerk shall:

(a) determine whether [~~or not~~] each signer is a registered voter according to the requirements of Section 20A-7-206.3;

(b) certify on the petition whether [~~or not~~] each name is that of a registered voter; and

(c) deliver all of the verified initiative packets to the lieutenant governor.

(4) Upon receipt of an initiative packet under Subsection (3) and any statement submitted under Subsection 20A-7-205(3), the lieutenant governor shall remove from the initiative petition a voter's signature if the voter has requested the removal in accordance with Subsection 20A-7-205(3).

(5) In order to qualify an initiative petition for submission to the Legislature, the sponsors shall deliver each signed and verified initiative packet to the county clerk of the county in which the packet was circulated by the November 15 before the next annual general session of the Legislature immediately after the application is filed under Section 20A-7-202.

(6) (a) No later than December 1 before the annual general session of the Legislature, the county clerk shall:

[~~(a)~~] (i) check the names of all persons completing the verification for the initiative packet to determine whether [~~or not~~] those persons are Utah residents and are at least 18 years old; and

[~~(b)~~] (ii) submit the name of each of those persons who is not a Utah resident or who is not at least 18 years old to the attorney general and county attorney.

(b) The county clerk may not certify a signature under Subsection (7) on an initiative packet that is not verified in accordance with Section 20A-7-205.

(7) No later than December 15 before the annual general session of the Legislature, the county clerk shall:

(a) determine whether [~~or not~~] each signer is a registered voter according to the requirements of Section 20A-7-206.3;

(b) certify on the petition whether [~~or not~~] each name is that of a registered voter; and

(c) deliver all of the verified initiative packets to the lieutenant governor.

(8) Initiative packets are public once they are delivered to the county clerks.

(9) The sponsor or their representatives may not retrieve initiative packets from the county clerks once they have submitted them.

Section 13. Section 20A-7-206.3 is amended to read:

20A-7-206.3. Verification of petition signatures.

(1) (a) For the purposes of this section, "substantially similar name" means:

(i) the given name and surname shown on the petition, or both, contain only minor spelling differences when compared to the given name and surname shown on the official register;

(ii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is a commonly used abbreviation or variation of the other;

(iii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is accompanied by a first or middle initial or a middle name which is not shown on the other record; or

(iv) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is an alphabetically corresponding initial that has been provided in the place of a given name shown on the other record.

(b) For the purposes of this section, "substantially similar name" does not mean a name having an initial or a middle name shown on the petition that does not match a different initial or middle name shown on the official register.

(2) The county clerk shall use the following procedures in determining whether or not a signer is a registered voter:

(a) When a signer's name and address shown on the petition exactly match a name and address shown on the official register and the signer's signature appears substantially similar to the signature on the statewide voter registration database, the county clerk shall declare the signature valid.

(b) When there is no exact match of an address and a name, the county clerk shall declare the signature valid if:

(i) the address on the petition matches the address of a person on the official register with a substantially similar name[~~,~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(b)(i).

(c) When there is no match of an address and a substantially similar name, the county clerk shall declare the signature valid if:

(i) the birth date or age on the petition matches the birth date or age of a person on the official register with a substantially similar name[~~,~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(c)(i).

(d) If a signature is not declared valid under Subsection (2)(a), (2)(b), or (2)(c), the county clerk shall declare the signature to be invalid.

Section 14. Section 20A-7-207 is amended to read:

20A-7-207. Evaluation by the lieutenant governor.

(1) When each initiative packet is received from a county clerk, the lieutenant governor shall check off from the record the number of each initiative packet filed.

(2) (a) After all of the initiative packets have been received by the lieutenant governor and the lieutenant governor has removed the signatures as required by Section 20A-7-206, the lieutenant governor shall:

(i) count the number of the names certified by the county clerks that remain on each verified signature sheet; and

(ii) declare the petition to be sufficient or insufficient by June 1 before the regular general election described in Subsection 20A-7-201(2)(b).

(b) If the total number of names counted under Subsection (2)(a)(i) equals or exceeds the number of names required by Section 20A-7-201 and the requirements of this part are met, the lieutenant governor shall mark upon the front of the petition the word "sufficient."

(c) If the total number of names counted under Subsection (2)(a)(i) does not equal or exceed the number of names required by Section 20A-7-201 or a requirement of this part is not met, the lieutenant governor shall mark upon the front of the petition the word "insufficient."

(d) The lieutenant governor shall immediately notify any one of the sponsors of [~~his~~] the lieutenant governor's finding.

(3) Once a petition is declared insufficient, the sponsors may not submit additional signatures to qualify the petition [~~for the pending regular general election~~] for the ballot.

(4) (a) If the lieutenant governor refuses to accept and file any initiative petition that a sponsor believes is legally sufficient, any voter may, by June 15, apply to the supreme court for an extraordinary writ to compel the lieutenant governor to do so.

(b) The supreme court shall:

(i) determine whether or not the initiative petition is legally sufficient; and

(ii) certify its findings to the lieutenant governor.

(c) If the supreme court certifies that the initiative petition is legally sufficient, the lieutenant governor shall file it, with a verified copy of the judgment attached to it, as of the date on

which it was originally offered for filing in [~~his~~] the lieutenant governor's office.

(d) If the supreme court determines that any petition filed is not legally sufficient, the supreme court may enjoin the lieutenant governor and all other officers from certifying or printing the ballot title and numbers of that measure on the official ballot [~~for the next election~~].

(5) A petition determined to be sufficient in accordance with this section is qualified for the ballot.

Section 15. Section 20A-7-301 is amended to read:

20A-7-301. Referendum -- Signature requirements -- Submission to voters.

(1) (a) A person seeking to have a law passed by the Legislature submitted to a vote of the people shall obtain:

(i) legal signatures equal to 10% of the cumulative total of all votes cast by voters of this state for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected; and

(ii) from each of at least 15 counties, legal signatures equal to 10% of the total of all votes cast in that county for all candidates for [~~governor~~] President of the United States at the last regular general election at which a [~~governor~~] President of the United States was elected.

(b) When the lieutenant governor declares a referendum petition sufficient under this part, the governor shall issue an executive order that:

(i) directs that the referendum be submitted to the voters at the next regular general election; or

(ii) calls a special election according to the requirements of Section 20A-1-203 and directs that the referendum be submitted to the voters at that special election.

(2) When a referendum petition has been declared sufficient, the law that is the subject of the petition does not take effect unless and until it is approved by a vote of the people at a regular general election or a statewide special election.

(3) The lieutenant governor shall provide to any interested person from the official canvass of the last regular general election at which a [~~governor~~] President of the United States was elected:

(a) the cumulative total of all votes cast by voters of this state for all candidates for [~~governor~~] President of the United States; and

(b) for each county, the total of all votes cast in that county for all candidates for [~~governor~~] President of the United States.

Section 16. Section 20A-7-305 is amended to read:

20A-7-305. Obtaining signatures -- Verification -- Removal of signature.

(1) A Utah voter may sign a referendum petition if the voter is a legal voter.

(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

[~~(a)~~] (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and

[~~(b)~~] (ii) verifies each signature sheet by completing the verification printed on the last page of each [~~signature sheet~~] referendum packet.

(b) A person may not sign the verification printed on the last page of the referendum packet if the person signed a signature sheet in the referendum packet.

(3) (a) (i) A voter who has signed a referendum petition may have the voter's signature removed from the petition by submitting to the county clerk a statement requesting that the voter's signature be removed.

(b) The statement shall include:

(i) the name of the voter;

(ii) the resident address at which the voter is registered to vote;

(iii) the last four digits of the voter's Social Security number;

(iv) the driver license or identification card number; and

(v) the signature of the voter.

(c) A voter may not submit a statement by email or other electronic means.

(d) In order for the signature to be removed, the statement must be received by the county clerk before the day which is 55 days after the end of the legislative session at which the law passed.

(e) The county clerk shall deliver all statements received under this Subsection (3):

(i) with the referendum petition packets to the lieutenant governor; or

(ii) in a supplemental delivery to the lieutenant governor for a statement submitted after the county clerk delivered the referendum petition packets.

(f) A person may only remove a signature from a referendum petition in accordance with this Subsection (3).

Section 17. Section 20A-7-306 is amended to read:

20A-7-306. Submitting the referendum petition -- Certification of signatures by the county clerks -- Transfer to lieutenant governor.

(1) (a) No later than 40 days after the end of the legislative session at which the law passed, the

sponsors shall deliver each signed and verified referendum packet to the county clerk of the county in which the packet was circulated.

(b) A sponsor may not submit a referendum packet after the deadline established in this Subsection (1).

(2) (a) No later than 55 days after the end of the legislative session at which the law passed, the county clerk shall:

[~~(a)~~] (i) check the names of all persons completing the verification on the [~~back of~~] last page of each [~~signature sheet~~] referendum packet to determine whether or not those persons are Utah residents and are at least 18 years old; and

[~~(b)~~] (ii) submit the name of each of those persons who is not a Utah resident or who is not at least 18 years old to the attorney general and county attorney.

(b) The county clerk may not certify a signature under Subsection (3) on a referendum packet that is not verified in accordance with Section 20A-7-305.

(3) No later than 55 days after the end of the legislative session at which the law passed, the county clerk shall:

(a) determine whether [~~or not~~] each signer is a registered voter according to the requirements of Section 20A-7-306.3;

(b) certify on the referendum petition whether [~~or not~~] each name is that of a registered voter; and

(c) deliver all of the verified referendum packets to the lieutenant governor.

(4) Upon receipt of a referendum packet under Subsection (3) and any statement submitted under Subsection 20A-7-305(3), the lieutenant governor shall remove from the referendum petition a voter's signature if the voter has requested the removal in accordance with Subsection 20A-7-305(3).

Section 18. Section 20A-7-306.3 is amended to read:

20A-7-306.3. Verification of petition signatures.

(1) (a) For the purposes of this section, "substantially similar name" means:

(i) the given name and surname shown on the petition, or both, contain only minor spelling differences when compared to the given name and surname shown on the official register;

(ii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is a commonly used abbreviation or variation of the other;

(iii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is accompanied by a first or middle initial or a middle name which is not shown on the other record; or

(iv) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is an alphabetically corresponding initial that has been provided in the place of a given name shown on the other record.

(b) For the purposes of this section, "substantially similar name" does not mean a name having an initial or a middle name shown on the petition that does not match a different initial or middle name shown on the official register.

(2) The county clerk shall use the following procedures in determining whether or not a signer is a registered voter:

(a) When a signer's name and address shown on the petition exactly match a name and address shown on the official register and the signer's signature appears substantially similar to the signature on the statewide voter registration database, the county clerk shall declare the signature valid.

(b) When there is no exact match of an address and a name, the county clerk shall declare the signature valid if:

(i) the address on the petition matches the address of a person on the official register with a substantially similar name[~~.~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(b)(i).

(c) When there is no match of an address and a substantially similar name, the county clerk shall declare the signature valid if:

(i) the birth date or age on the petition matches the birth date or age of a person on the official register with a substantially similar name[~~.~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(c)(i).

(d) If a signature is not declared valid under Subsection (2)(a), (b), or (c), the county clerk shall declare the signature to be invalid.

Section 19. Section 20A-7-307 is amended to read:

20A-7-307. Evaluation by the lieutenant governor.

(1) When each referendum packet is received from a county clerk, the lieutenant governor shall check off from the record the number of each referendum packet filed.

(2) (a) After all of the referendum packets have been received by the lieutenant governor and the lieutenant governor has removed the signatures as required by Section 20A-7-306, the lieutenant governor shall:

(i) count the number of the names certified by the county clerks that remain on each verified signature sheet; and

(ii) declare the petition to be sufficient or insufficient no later than 60 days after the end of the legislative session at which the law passed.

(b) If the total number of names counted under Subsection (2)(a)(i) equals or exceeds the number of names required by Section 20A-7-301 and the requirements of this part are met, the lieutenant governor shall mark upon the front of the petition the word "sufficient."

(c) If the total number of names counted under Subsection (2)(a)(i) does not equal or exceed the number of names required by Section 20A-7-301 or a requirement of this part is not met, the lieutenant governor shall mark upon the front of the petition the word "insufficient."

(d) The lieutenant governor shall immediately notify any one of the sponsors of [~~his~~] the lieutenant governor's finding.

(3) (a) If the lieutenant governor refuses to accept and file any referendum petition, any voter may apply to the supreme court for an extraordinary writ to compel [~~him~~] the lieutenant governor to do so within 10 days after the refusal.

(b) If the supreme court determines that the referendum petition is legally sufficient, the lieutenant governor shall file it, with a verified copy of the judgment attached to it, as of the date on which it was originally offered for filing in [~~his~~] the lieutenant governor's office.

(c) If the supreme court determines that any petition filed is not legally sufficient, the supreme court may enjoin the lieutenant governor and all other officers from certifying or printing the ballot title and numbers of that measure on the official ballot [~~for the next election~~].

(4) A petition determined to be sufficient in accordance with this section is qualified for the ballot.

Section 20. Section 20A-7-501 is amended to read:

20A-7-501. Initiatives.

(1) (a) Except as provided in Subsection (1)(b), a person seeking to have an initiative submitted to a local legislative body or to a vote of the people for approval or rejection shall obtain legal signatures equal to:

(i) 10% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes exceeds 25,000;

(ii) 12-1/2% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 25,000 but is more than 10,000;

(iii) 15% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 10,000 but is more than 2,500;

(iv) 20% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 2,500 but is more than 500;

(v) 25% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 500 but is more than 250; and

(vi) 30% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 250.

(b) In addition to the signature requirements of Subsection (1)(a), a person seeking to have an initiative submitted to a local legislative body or to a vote of the people for approval or rejection in a county, city, or town where the local legislative body is elected from council districts shall obtain, from each of a majority of council districts, legal signatures equal to the percentages established in Subsection (1)(a).

(2) If the total number of certified names from each verified signature sheet equals or exceeds the number of names required by this section, the clerk or recorder shall deliver the proposed law to the local legislative body at its next meeting.

(3) (a) The local legislative body shall either adopt or reject the proposed law without change or amendment within 30 days of receipt of the proposed law.

(b) The local legislative body may:

(i) adopt the proposed law and refer it to the people;

(ii) adopt the proposed law without referring it to the people; or

(iii) reject the proposed law.

(c) If the local legislative body adopts the proposed law but does not refer it to the people, it is subject to referendum as with other local laws.

(d) (i) If a county legislative body rejects a proposed county ordinance or amendment, or takes no action on it, the county clerk shall submit it to the voters of the county at the next regular general election immediately after the petition is filed under Section 20A-7-502.

(ii) If a local legislative body rejects a proposed municipal ordinance or amendment, or takes no action on it, the municipal recorder or clerk shall

submit it to the voters of the municipality at the next municipal general election immediately after the petition is filed under Section 20A-7-502.

(e) (i) If the local legislative body rejects the proposed ordinance or amendment, or takes no action on it, the local legislative body may adopt a competing local law.

(ii) The local legislative body shall prepare and adopt the competing local law within the 30 days allowed for its action on the measure proposed by initiative petition.

(iii) If the local legislative body adopts a competing local law, the clerk or recorder shall submit it to the voters of the county or municipality at the same election at which the initiative proposal is submitted.

(f) If conflicting local laws are submitted to the people at the same election and two or more of the conflicting measures are approved by the people, then the measure that receives the greatest number of affirmative votes shall control all conflicts.

Section 21. Section 20A-7-502.5 is amended to read:

20A-7-502.5. Initial fiscal impact estimate -- Preparation of estimate -- Challenge to estimate.

(1) Within three working days of receipt of an application for an initiative petition, the local clerk shall submit a copy of the application to the budget officer.

(2) (a) The budget officer shall prepare an unbiased, good faith estimate of the fiscal impact of the law proposed by the initiative that contains:

(i) a dollar amount representing the total estimated fiscal impact of the proposed law;

(ii) if the proposed law would increase or decrease taxes, a dollar amount representing the total estimated increase or decrease for each type of tax affected under the proposed law and a dollar amount representing the total estimated increase or decrease in taxes under the proposed law;

(iii) if the proposed law would result in the issuance or a change in the status of bonds, notes, or other debt instruments, a dollar amount representing the total estimated increase or decrease in public debt under the proposed law;

(iv) a listing of all sources of funding for the estimated costs associated with the proposed law showing each source of funding and the percentage of total funding provided from each source;

(v) a dollar amount representing the estimated costs or savings, if any, to state and local government entities under the proposed law; and

(vi) a concise explanation, not exceeding 100 words, of the above information and of the estimated fiscal impact, if any, under the proposed law.

(b) (i) If the proposed law is estimated to have no fiscal impact, the local budget officer shall include a summary statement in the initial fiscal impact statement in substantially the following form:

"The (title of the local budget officer) estimates that the law proposed by this initiative would have no significant fiscal impact and would not result in either an increase or decrease in taxes or debt."

(ii) If the proposed law is estimated to have a fiscal impact, the local budget officer shall include a summary statement in the initial fiscal impact estimate in substantially the following form:

"The (title of the local budget officer) estimates that the law proposed by this initiative would result in a total fiscal expense/savings of $_____, which includes a (type of tax or taxes) tax increase/decrease of $_____ and a $_____ increase/decrease in public debt."

(iii) If the estimated fiscal impact of the proposed law is highly variable or is otherwise difficult to reasonably express in a summary statement, the local budget officer may include in the summary statement a brief explanation that identifies those factors affecting the variability or difficulty of the estimate.

(3) The budget officer shall prepare an unbiased, good faith estimate of the cost of printing and distributing information related to the initiative petition in the voter information pamphlet as required by Section 20A-7-402.

[~~(3)~~] (4) Within 25 calendar days from the date that the local clerk delivers a copy of the application, the budget officer shall:

(a) deliver a copy of the initial fiscal impact estimate to the local clerk's office; and

(b) mail a copy of the initial fiscal impact estimate to the first five sponsors named in the application.

[~~(4)~~] (5) (a) Three or more of the sponsors of the petition may, within 20 calendar days of the date of delivery of the initial fiscal impact estimate to the local clerk's office, file a petition with the Supreme Court, alleging that the initial fiscal impact estimate, taken as a whole, is an inaccurate estimate of the fiscal impact of the initiative.

(b) (i) There is a presumption that the initial fiscal impact estimate prepared by the budget officer is based upon reasonable assumptions, uses reasonable data, and applies accepted analytical methods to present the estimated fiscal impact of the initiative.

(ii) The Supreme Court may not revise the contents of, or direct the revision of, the initial fiscal impact estimate unless the plaintiffs rebut the presumption by clear and convincing evidence that establishes that the fiscal estimate, taken as a whole, is an inaccurate statement of the estimated fiscal impact of the initiative.

(iii) The Supreme Court may refer an issue related to the initial fiscal impact estimate to a master to examine the issue and make a report in accordance with Utah Rules of Civil Procedure, Rule 53.

(c) The Supreme Court shall certify to the local clerk an initial fiscal impact estimate for the

measure that meets the requirements of this section.

Section 22. Section 20A-7-503 is amended to read:

20A-7-503. Form of initiative petitions and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

"INITIATIVE PETITION To the Honorable ____, County Clerk/City Recorder/Town Clerk:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to: the legislative body for its approval or rejection at its next meeting; and the legal voters of the county/city/town, if the legislative body rejects the proposed law or takes no action on it.

Each signer says:

I have personally signed this petition;

I am registered to vote in Utah or intend to become registered to vote in Utah before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name."

(b) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

(a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line;

(d) contain the initial fiscal impact estimate's summary statement issued by the budget officer according to Subsection 20A-7-502.5(2)(b) and the cost estimate for printing and distributing information related to the initiative petition according to Subsection 20A-7-502.5(3) printed or typed in not less than 12-point, bold type, at the top of each signature sheet under the title of the initiative;

(e) contain the word "Warning" printed or typed at the top of each signature sheet under the initial fiscal impact estimate's summary statement;

(f) contain, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single leaded type:

"It is a class A misdemeanor for anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign an initiative petition when he knows he is not a registered voter and knows that he does not intend to become registered to vote before the certification of the petition names by the county clerk.";

(g) contain horizontally ruled lines, 3/8 inch apart under the "Warning" statement required by this section;

(h) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be 5/8 inch wide, be headed with "For Office Use Only", and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;

(ii) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be 2-1/2 inches wide, headed "Signature of Registered Voter";

(iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)";

(v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code"; and

(vi) at the bottom of the sheet, contain the following statement: "Birth date or age information is not required, but it may be used to verify your identity with voter registration records. If you choose not to provide it, your signature may not be verified as a valid signature if you change your address before petition signatures are verified or if the information you provide does not match your voter registration records."; and

(i) contain the following statement, printed or typed upon the back of each sheet:

"Verification

State of Utah, County of ____

I, _____, of ____, hereby state that:

I am a resident of Utah and am at least 18 years old;

All the names that appear on this sheet were signed by persons who professed to be the persons whose names appear in it, and each of them signed his name on it in my presence;

I believe that each has printed and signed his name and written his post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

_____"

(3) The forms prescribed in this section are not mandatory, and, if substantially followed, the initiative petitions are sufficient, notwithstanding clerical and merely technical errors.

Section 23. Section 20A-7-505 is amended to read:

20A-7-505. Obtaining signatures -- Verification -- Removal of signature.

(1) Any Utah voter may sign a local initiative petition if the voter is a legal voter and resides in the local jurisdiction.

(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

[~~(a)~~] (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and

[~~(b)~~] (ii) verifies each signature sheet by completing the verification printed on the back of each signature sheet.

(b) A person may not sign the verification printed on the last page of the initiative packet if the person signed a signature sheet in the initiative packet.

(3) (a) (i) Any voter who has signed an initiative petition may have [~~his~~] the voter's signature removed from the petition by submitting a notarized statement to that effect to the local clerk.

(ii) In order for the signature to be removed, the statement must be received by the local clerk before he delivers the petition to the county clerk to be certified.

(b) Upon receipt of the statement, the local clerk shall remove the signature of the person submitting the statement from the initiative petition.

(c) No one may remove signatures from an initiative petition after the petition is submitted to the county clerk to be certified.

Section 24. Section 20A-7-506 is amended to read:

20A-7-506. Submitting the initiative petition -- Certification of signatures by the county clerks -- Transfer to local clerk.

(1) (a) The sponsors shall deliver each signed and verified initiative packet to the county clerk of the county in which the packet was circulated [~~no later than~~] on or before the sooner of:

[~~(a)~~] (i) for county initiatives[~~, no later than~~]:

(A) 316 days after the day on which the application is filed; or

(B) the April 15 [~~falling~~] immediately before the next regular general election immediately after the application is filed under Section 20A-7-502; or

[~~(b)~~] (ii) for municipal initiatives[~~, no later than~~]:

(A) 316 days after the day on which the application is filed; or

(B) the April 15 [~~falling~~] immediately before the next municipal general election immediately after the application is filed under Section 20A-7-502.

(b) A sponsor may not submit an initiative packet after the deadline established in this Subsection (1).

(2) (a) No later than May 1, the county clerk shall:

[~~(a)~~] (i) check the names of all persons completing the verification on the back of each signature sheet to determine whether [~~or not~~] those persons are residents of Utah and are at least 18 years old; and

[~~(b)~~] (ii) submit the name of each of those persons who is not a Utah resident or who is not at least 18 years old to the attorney general and county attorney.

(b) The county clerk may not certify a signature under Subsection (3) on an initiative packet that is not verified in accordance with Section 20A-7-505.

(3) No later than May 15, the county clerk shall:

(a) determine whether or not each signer is a voter according to the requirements of Section 20A-7-506.3;

(b) certify on the petition whether or not each name is that of a voter; and

(c) deliver all of the verified packets to the local clerk.

Section 25. Section 20A-7-506.3 is amended to read:

20A-7-506.3. Verification of petition signatures.

(1) (a) For the purposes of this section, "substantially similar name" means:

(i) the given name and surname shown on the petition, or both, contain only minor spelling differences when compared to the given name and surname shown on the official register;

(ii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is a commonly used abbreviation or variation of the other;

(iii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is accompanied by a first or middle initial or a middle name which is not shown on the other record; or

(iv) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is an alphabetically corresponding initial that has been provided in the place of a given name shown on the other record.

(b) For the purposes of this section, "substantially similar name" does not mean a name having an initial or a middle name shown on the petition that does not match a different initial or middle name shown on the official register.

(2) The county clerk shall use the following procedures in determining whether or not a signer is a registered voter:

(a) When a signer's name and address shown on the petition exactly match a name and address shown on the official register and the signer's signature appears substantially similar to the signature on the statewide voter registration database, the county clerk shall declare the signature valid.

(b) When there is no exact match of an address and a name, the county clerk shall declare the signature valid if:

(i) the address on the petition matches the address of a person on the official register with a substantially similar name[.]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(b)(i).

(c) When there is no match of an address and a substantially similar name, the county clerk shall declare the signature valid if:

(i) the birth date or age on the petition matches the birth date or age of a person on the official register with a substantially similar name[.]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(c)(i).

(d) If a signature is not declared valid under Subsection (2)(a), (2)(b), or (2)(c), the county clerk shall declare the signature to be invalid.

Section 26. Section 20A-7-507 is amended to read:

20A-7-507. Evaluation by the local clerk.

(1) When each initiative packet is received from a county clerk, the local clerk shall check off from [~~his~~] the local clerk's record the number of each initiative packet filed.

(2) (a) After all of the initiative packets have been received by the local clerk, the local clerk shall count the number of the names certified by the county clerk that appear on each verified signature sheet.

(b) If the total number of certified names from each verified signature sheet equals or exceeds the number of names required by Section 20A-7-501 and the requirements of this part are met, the local clerk shall mark upon the front of the petition the word "sufficient."

(c) If the total number of certified names from each verified signature sheet does not equal or exceed the number of names required by Section 20A-7-501 or a requirement of this part is not met, the local clerk shall mark upon the front of the petition the word "insufficient."

(d) The local clerk shall immediately notify any one of the sponsors of [~~his~~] the local clerk's finding.

(3) If the local clerk finds the total number of certified signatures from each verified signature sheet to be insufficient, any sponsor may file a written demand with the local clerk for a recount of the signatures appearing on the initiative petition in the presence of any sponsor.

(4) [~~(a)~~] Once a petition is declared insufficient, the sponsors may not submit additional signatures to qualify the petition [~~for the pending election~~] for the ballot.

[~~(b) If the petition is declared insufficient, the petition sponsors may submit additional signatures to qualify the petition for:~~]

[~~(i) the next regular general election following the pending regular general election if the petition was a county initiative petition; or~~]

[~~(ii) the next municipal general election if the petition was a municipal initiative petition.~~]

(5) (a) If the local clerk refuses to accept and file any initiative petition, any voter may apply to the supreme court for an extraordinary writ to compel him to do so within 10 days after the refusal.

(b) If the supreme court determines that the initiative petition is legally sufficient, the local clerk shall file it, with a verified copy of the judgment attached to it, as of the date on which it was originally offered for filing in [~~his~~] the local clerk's office.

(c) If the supreme court determines that any petition filed is not legally sufficient, the supreme court may enjoin the local clerk and all other officers from certifying or printing the ballot title and numbers of that measure on the official ballot [~~for the next election~~].

(6) A petition determined to be sufficient in accordance with this section is qualified for the ballot.

Section 27. Section 20A-7-601 is amended to read:

20A-7-601. Referenda -- General signature requirements -- Signature requirements for land use laws -- Time requirements.

(1) Except as provided in Subsection (2), a person seeking to have a law passed by the local legislative body submitted to a vote of the people shall obtain legal signatures equal to:

(a) 10% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes exceeds 25,000;

(b) 12-1/2% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 25,000 but is more than 10,000;

(c) 15% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 10,000 but is more than 2,500;

(d) 20% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 2,500 but is more than 500;

(e) 25% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 500 but is more than 250; and

(f) 30% of all the votes cast in the county, city, or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected if the total number of votes does not exceed 250.

(2) (a) As used in this Subsection (2), "land use law" includes a land use development code, an annexation ordinance, and comprehensive zoning ordinances.

(b) A person seeking to have a land use law passed by the local legislative body submitted to a vote of the people shall obtain legal signatures equal to:

(i) in a county or in a city of the first or second class, 20% of all votes cast in the county or city for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected; and

(ii) in a city of the third, fourth, or fifth class or a town, 35% of all the votes cast in the city or town for all candidates for [~~governor~~] President of the United States at the last election at which a [~~governor~~] President of the United States was elected.

(3) (a) Sponsors of any referendum petition challenging, under Subsection (1) or (2), any local law passed by a local legislative body shall file the [~~petition~~] application within [~~45~~] five days after the passage of the local law.

[~~(b) The local law remains in effect until repealed by the voters via referendum.~~]

(b) When a referendum petition has been declared sufficient, the local law that is the subject of the petition does not take effect unless and until the local law is approved by a vote of the people.

(4) If the referendum passes, the local law that was challenged by the referendum is repealed as of the date of the election.

Section 28. Section 20A-7-605 is amended to read:

20A-7-605. Obtaining signatures -- Verification -- Removal of signature.

(1) Any Utah voter may sign a local referendum petition if the voter is a legal voter and resides in the local jurisdiction.

(2) (a) The sponsors shall ensure that the person in whose presence each signature sheet was signed:

[~~(a)~~] (i) is at least 18 years old and meets the residency requirements of Section 20A-2-105; and

[~~(b)~~] (ii) verifies each signature sheet by completing the verification printed on the back of each [~~signature sheet~~] referendum packet.

(b) A person may not sign the verification printed on the last page of the referendum packet if the person signed a signature sheet in the referendum packet.

(3) (a) Any voter who has signed a referendum petition may have [~~his~~] the voter's signature removed from the petition by submitting a notarized statement to that effect to the local clerk.

(b) Except as provided in Subsection (3)(c), upon receipt of the statement, the local clerk shall remove the signature of the person submitting the statement from the referendum petition.

(c) A local clerk may not remove signatures from a referendum petition after the petition has been submitted to the county clerk to be certified.

Section 29. Section 20A-7-606 is amended to read:

20A-7-606. Submitting the referendum petition -- Certification of signatures by the county clerks -- Transfer to local clerk.

(1) (a) The sponsors shall deliver each signed and verified referendum packet to the county clerk of the county in which the packet was circulated:

[~~(a)~~] (i) for county referenda, no later than [~~the April 15 falling before the regular general election~~] 45 days after the passage of the local law;

[~~(b)~~] (ii) for municipal referenda, no later than [~~the April 15 falling before the municipal general election~~] 45 days after the passage of the local law; or

[~~(c)~~] (iii) for referenda held in relation to the adoption of an ordinance imposing a county option sales and use tax under Section 59-12-1102, no later than 100 days before the election that the referendum qualifies for under Subsection 20A-7-609(2)(c).

(b) A sponsor may not submit a referendum packet after the deadline established in this Subsection (1).

(2) (a) No later than [~~May 1~~] 60 days after the local law passes, the county clerk shall:

[~~(a)~~] (i) check the names of all persons completing the verification on the back of each [~~signature sheet~~] referendum packet to determine whether [~~or not~~] those persons are Utah residents and are at least 18 years old; and

[~~(b)~~] (ii) submit the name of each of those persons who is not a Utah resident or who is not at least 18 years old to the attorney general and county attorney.

(b) The county clerk may not certify a signature under Subsection (3) on a referendum packet that is not verified in accordance with Section 20A-7-605.

(3) No later than [~~May 15~~] 75 days after the local law passes, the county clerk shall:

(a) determine whether [~~or not~~] each signer is a registered voter according to the requirements of Section 20A-7-606.3;

(b) certify on the referendum petition whether [~~or not~~] each name is that of a registered voter; and

(c) deliver all of the verified referendum packets to the local clerk.

Section 30. Section 20A-7-606.3 is amended to read:

20A-7-606.3. Verification of petition signatures.

(1) (a) For the purposes of this section, "substantially similar name" means:

(i) the given name and surname shown on the petition, or both, contain only minor spelling differences when compared to the given name and surname shown on the official register;

(ii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is a commonly used abbreviation or variation of the other;

(iii) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is accompanied by a first or middle initial or a middle name which is not shown on the other record; or

(iv) the surname shown on the petition exactly matches the surname shown on the official register, and the given names differ only because one of the given names shown is an alphabetically corresponding initial that has been provided in the place of a given name shown on the other record.

(b) For the purposes of this section, "substantially similar name" does not mean a name having an initial or a middle name shown on the petition that does not match a different initial or middle name shown on the official register.

(2) The county clerk shall use the following procedures in determining whether or not a signer is a registered voter:

(a) When a signer's name and address shown on the petition exactly match a name and address shown on the official register and the signer's signature appears substantially similar to the signature on the statewide voter registration database, the county clerk shall declare the signature valid.

(b) When there is no exact match of an address and a name, the county clerk shall declare the signature valid if:

(i) the address on the petition matches the address of a person on the official register with a substantially similar name[~~.~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(b)(i).

(c) When there is no match of an address and a substantially similar name, the county clerk shall declare the signature valid if:

(i) the birth date or age on the petition matches the birth date or age of a person on the official register with a substantially similar name[~~.~~]; and

(ii) the signer's signature appears substantially similar to the signature on the statewide voter registration database of the person described in Subsection (2)(c)(i).

(d) If a signature is not declared valid under Subsection (2)(a), (b), or (c), the county clerk shall declare the signature to be invalid.

Section 31. Section 20A-7-607 is amended to read:

20A-7-607. Evaluation by the local clerk.

(1) When each referendum packet is received from a county clerk, the local clerk shall check off from [~~his~~] the local clerk's record the number of each referendum packet filed.

(2) (a) After all of the referendum packets have been received by the local clerk, the local clerk shall count the number of the names certified by the county clerks that appear on each verified signature sheet.

(b) If the total number of certified names from each verified signature sheet equals or exceeds the number of names required by Section 20A-7-601 and the requirements of this part are met, the local clerk shall mark upon the front of the petition the word "sufficient."

(c) If the total number of certified names from each verified signature sheet does not equal or exceed the number of names required by Section 20A-7-601 or a requirement of this part is not met, the local clerk shall mark upon the front of the petition the word "insufficient."

(d) The local clerk shall immediately notify any one of the sponsors of [~~his~~] the local clerk's finding.

(3) If the local clerk finds the total number of certified signatures from each verified signature sheet to be insufficient, any sponsor may file a written demand with the local clerk for a recount of the signatures appearing on the referendum petition in the presence of any sponsor.

(4) (a) If the local clerk refuses to accept and file any referendum petition, any voter may apply to the Supreme Court for an extraordinary writ to compel [~~him~~] the local clerk to do so within 10 days after the refusal.

(b) If the Supreme Court determines that the referendum petition is legally sufficient, the local clerk shall file it, with a verified copy of the judgment attached to it, as of the date on which it was originally offered for filing in [~~his~~] the local clerk's office.

(c) If the Supreme Court determines that any petition filed is not legally sufficient, the Supreme Court may enjoin the local clerk and all other officers from certifying or printing the ballot title and numbers of that measure on the official ballot for the next election.

(5) A petition determined to be sufficient in accordance with this section is qualified for the ballot.

Section 32. Section 20A-7-609 is amended to read:

20A-7-609. Form of ballot -- Manner of voting.

(1) The local clerk shall ensure that the number and ballot title are presented upon the official ballot with, immediately adjacent to them, the words "For" and "Against," each word presented with an adjacent square in which the elector may indicate the elector's vote.

(2) (a) Except as provided in Subsection (2)(c) or (d)(i), and unless the county legislative body calls a special election, the county clerk shall ensure that county referenda that have qualified for the ballot appear on the next regular general election ballot.

(b) [~~Unless~~] Except as provided in Subsection (2)(d)(ii) and unless the municipal legislative body calls a special election, the municipal recorder or clerk shall ensure that municipal referenda that have qualified for the ballot appear on the next regular municipal election ballot.

(c) For referenda held in relation to the adoption of an ordinance imposing a county option sales and use tax under Section 59-12-1102, the county clerk shall ensure that referenda that have qualified for the ballot appear on the ballot at the earlier of:

(i) the next regular general election that is more than 155 days after the date of the adoption of the ordinance; or

(ii) the next municipal general election that is more than 155 days after the date of the adoption of the ordinance.

(d) (i) If a local law passes after January 30 of the year in which there is a regular general election, the county clerk shall ensure that a county referendum that has qualified for the ballot appears on the ballot at the second regular general election immediately following the passage of the local law unless the county legislative body calls a special election.

(ii) If a local law passes after January 30 of the year in which there is a municipal general election, the municipal recorder or clerk shall ensure that a municipal referendum that has qualified for the ballot appears on the ballot at the second municipal general election immediately following the passage of the local law unless the municipal legislative body calls a special election.

(3) (a) (i) A voter desiring to vote in favor of the law that is the subject of the referendum shall mark the square adjacent to the word "For."

(ii) The law that is the subject of the referendum is effective if a majority of voters mark "For."

(b) (i) A voter desiring to vote against the law that is the subject of the referendum petition shall mark the square following the word "Against."

(ii) The law that is the subject of the referendum is not effective if a majority of voters mark "Against."

Section 33. Section 20A-8-103 is amended to read:

20A-8-103. Petition procedures.

(1) As used in this section, the proposed name or emblem of a registered political party is "distinguishable" if a reasonable person of average intelligence will be able to perceive a difference between the proposed name or emblem and any name or emblem currently being used by another registered political party.

(2) To become a registered political party, an organization of registered voters that is not a continuing political party shall:

(a) circulate a petition seeking registered political party status beginning no earlier than the date of the statewide canvass held after the last regular general election and ending no later than the February 15 of the year in which the next regular general election will be held; and

(b) file a petition with the lieutenant governor that is signed, with a holographic signature, by at least 2,000 registered voters on or before February 15 of the year in which a regular general election will be held.

(3) The petition shall:

(a) state that the signers are or desire to become members of the designated party or group;

(b) state the name, which may not exceed four words, and identify the emblem of the party or group;

(c) state the process that the organization will follow to organize and adopt a constitution and bylaws; and

(d) be signed by a filing officer, who agrees to receive communications on behalf of the organization.

(4) The lieutenant governor shall:

(a) determine whether [~~or not~~] the required number of voters appears on the petition;

(b) review the proposed name and emblem to determine if they are "distinguishable" from the names and emblems of other registered political parties; and

(c) certify [~~his~~] the lieutenant governor's findings to the filing officer of the group within 30 days of the filing of the petition.

(5) (a) If the lieutenant governor determines that the petition meets the requirements of this section, and that the proposed name and emblem are distinguishable, he shall authorize the filing officer to organize the prospective political party.

(b) If the lieutenant governor finds that the name, emblem, or both are not distinguishable from the names and emblems of other registered political parties, the lieutenant governor shall notify the filing officer that [~~he~~] the filing officer has seven days to submit a new name or emblem to the lieutenant governor.

(6) A registered political party may not change its name or emblem during the regular general election cycle.

Section 34. Section 20A-9-203 is amended to read:

20A-9-203. Declarations of candidacy -- Municipal general elections.

(1) (a) (i) A person may become a candidate for any municipal office if:

(A) the person is a registered voter; and

(B) (I) the person has resided within the municipality in which that person seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or

(II) if the territory in which the person resides was annexed into the municipality, the person has resided within the annexed territory or the municipality the 12 consecutive months immediately before the date of the election.

(ii) For purposes of determining whether a person meets the residency requirement of Subsection (1)(a)(i)(B)(I) in a municipality that was incorporated less than 12 months before the election, the municipality shall be considered to have been incorporated 12 months before the date of the election.

(b) In addition to the requirements of Subsection (1)(a), each candidate for a municipal council position shall, if elected from a district, be a resident of the council district from which elected.

(c) In accordance with Utah Constitution Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to hold elective office is restored under Section 20A-2-101.5.

(2) (a) Except as provided in Subsection (2)(b) or (2)(c), each person seeking to become a candidate for a municipal office shall:

(i) file a declaration of candidacy, in person with the city recorder or town clerk, during office hours and not later than the close of normal office hours, between July 1 and July 15 of any odd numbered year; and

(ii) pay the filing fee, if one is required by municipal ordinance.

(b) (i) As used in this Subsection (2)(b), "registered voters" means the number of persons registered to vote in the municipality on the January 1 of the municipal election year.

(ii) A third, fourth, or fifth class city that used the convention system to nominate candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last municipal election or a town that used the convention system to nominate candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last municipal election may, by ordinance, require, in lieu of the convention system, that candidates for municipal office file a nominating petition signed by a percentage of registered voters at the same time that the candidate files a declaration of candidacy.

(iii) The ordinance shall specify the number of holographic signatures that the candidate must obtain on the nominating petition in order to become a candidate for municipal office under this Subsection (2), but that number may not exceed 5% of registered voters.

(c) Any resident of a municipality may nominate a candidate for a municipal office by:

(i) filing a nomination petition with the city recorder or town clerk during office hours, but not later than the close of normal office hours, between July 1 and July 15 of any odd-numbered year; and

(ii) paying the filing fee, if one is required by municipal ordinance.

(3) (a) Before the filing officer may accept any declaration of candidacy or nomination petition, the filing officer shall:

(i) read to the prospective candidate or person filing the petition the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(ii) require the candidate or person filing the petition to state whether [~~or not~~] the candidate meets those requirements.

(b) If the prospective candidate does not meet the qualification requirements for the office, the filing officer may not accept the declaration of candidacy or nomination petition.

(c) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall:

(i) inform the candidate that the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer; and

(v) accept the declaration of candidacy or nomination petition.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) ____, being first sworn, say that I reside at ____ Street, City of ____, County of ____, state of Utah, Zip Code ____, Telephone Number (if any) ____; that I am a registered voter; and that I am a candidate for the office of ____ (stating the term). I will meet the legal qualifications required of candidates for this office. I will file all campaign financial disclosure reports as required by law and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. I request that my name be printed upon the applicable official ballots. (Signed) _____

Subscribed and sworn to (or affirmed) before me by ____ on this _____(month\day\year).

(Signed) _____
(Clerk or other officer qualified to administer oath)"

(5) (a) In all first and second class cities, and in third, fourth, or fifth class cities that have not passed the ordinance authorized by Subsection (2)(b) and in towns that have not passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated for municipal office by submitting a petition signed, with a holographic signature, by:

(i) 25 residents of the municipality who are at least 18 years old; or

(ii) 20% of the residents of the municipality who are at least 18 years old.

(b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of ____ for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of persons signing the petition and their addresses and telephone numbers.

(6) (a) In third, fourth, and fifth class cities that have passed the ordinance authorized by Subsection (2)(b), and in towns that have passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated for municipal office by submitting a petition signed, with a holographic signature, by the same percentage of registered voters in the municipality as required by the ordinance passed under authority of Subsection (2)(b).

(b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of (name of office) for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the holographic signatures of persons signing the petition and their addresses and telephone numbers.

(7) If the declaration of candidacy or nomination petition fails to state whether the nomination is for the two or four-year term, the clerk shall consider the nomination to be for the four-year term.

(8) (a) The clerk shall verify with the county clerk that all candidates are registered voters.

(b) Any candidate who is not registered to vote is disqualified and the clerk may not print the candidate's name on the ballot.

(9) Immediately after expiration of the period for filing a declaration of candidacy, the clerk shall:

(a) cause the names of the candidates as they will appear on the ballot to be published:

(i) in at least two successive publications of a newspaper with general circulation in the municipality; and

(ii) as required in Section 45-1-101; and

(b) notify the lieutenant governor of the names of the candidates as they will appear on the ballot.

(10) A declaration of candidacy or nomination petition filed under this section may not be amended after the expiration of the period for filing a declaration of candidacy.

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

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

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

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

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

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

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

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

(12) Any person who filed a declaration of candidacy and was nominated, and any person who

was nominated by a nomination petition, may, any time up to 23 days before the election, withdraw the nomination by filing a written affidavit with the clerk.

Section 35. Section 20A-9-404 is amended to read:

20A-9-404. Municipal primary elections.

(1) (a) Except as otherwise provided in this section, candidates for municipal office in all municipalities shall be nominated at a municipal primary election.

(b) Municipal primary elections shall be held:

(i) consistent with Section 20A-1-201.5, on the second Tuesday following the first Monday in the September before the regular municipal election; and

(ii) whenever possible, at the same polling places as the regular municipal election.

(2) If the number of candidates for a particular municipal office does not exceed twice the number of persons needed to fill that office, a primary election for that office may not be held and the candidates are considered nominated.

(3) (a) For purposes of this Subsection (3), "convention" means an organized assembly of voters or delegates.

(b) (i) By ordinance adopted before the June 1 that falls before a regular municipal election, any third, fourth, or fifth class city or town may exempt itself from a primary election by providing that the nomination of candidates for municipal office to be voted upon at a municipal election be nominated by a political party convention or committee.

(ii) Any primary election exemption ordinance adopted under the authority of this subsection remains in effect until repealed by ordinance.

(c) (i) A convention or committee may not nominate more than one group of candidates or have placed on the ballot more than one group of candidates for the municipal offices to be voted upon at the municipal election.

(ii) A convention or committee may nominate a person who has been nominated by a different convention or committee.

(iii) A political party may not have more than one group of candidates placed upon the ballot and may not group the same candidates on different tickets by the same party under a different name or emblem.

(d) (i) The convention or committee shall prepare a certificate of nomination for each person nominated.

(ii) The certificate of nomination shall:

(A) contain the name of the office for which each person is nominated, the name, post office address, and, if in a city, the street number of residence and place of business, if any, of each person nominated;

(B) designate in not more than five words the political party that the convention or committee represents;

(C) contain a copy of the resolution passed at the convention that authorized the committee to make the nomination;

(D) contain a statement certifying that the name of the candidate nominated by the political party will not appear on the ballot as a candidate for any other political party;

(E) be signed by the presiding officer and secretary of the convention or committee; and

(F) contain a statement identifying the residence and post office address of the presiding officer and secretary and certifying that the presiding officer and secretary were officers of the convention or committee and that the certificates are true to the best of their knowledge and belief.

(iii) Certificates of nomination shall be filed with the clerk not later than the sixth Tuesday before the November municipal election.

(e) A committee appointed at a convention, if authorized by an enabling resolution, may also make nominations or fill vacancies in nominations made at a convention.

(f) The election ballot shall substantially comply with the form prescribed in Title 20A, Chapter 6, Part 4, Ballot Form Requirements for Municipal Elections, but the party name shall be included with the candidate's name.

(4) (a) Any third, fourth, or fifth class city may adopt an ordinance before the June 1 that falls before the regular municipal election that:

(i) exempts the city from the other methods of nominating candidates to municipal office provided in this section; and

(ii) provides for a partisan primary election method of nominating candidates as provided in this Subsection (4).

(b) (i) Any party that was a registered political party at the last regular general election or regular municipal election is a municipal political party under this section.

(ii) Any political party may qualify as a municipal political party by presenting a petition to the city recorder that:

(A) is signed, with a holographic signature, by registered voters within the municipality equal to at least 20% of the number of votes cast for all candidates for mayor in the last municipal election at which a mayor was elected;

(B) is filed with the city recorder by the seventh Tuesday before the date of the municipal primary election;

(C) is substantially similar to the form of the signature sheets described in Section 20A-7-303; and

(D) contains the name of the municipal political party using not more than five words.

(c) (i) If the number of candidates for a particular office does not exceed twice the number of offices to be filled at the regular municipal election, no partisan primary election for that office shall be held and the candidates are considered to be nominated.

(ii) If the number of candidates for a particular office exceeds twice the number of offices to be filled at the regular municipal election, those candidates for municipal office shall be nominated at a partisan primary election.

(d) The clerk shall ensure that:

(i) the partisan municipal primary ballot is similar to the ballot forms required by Sections 20A-6-401 and 20A-6-401.1;

(ii) the candidates for each municipal political party are listed in one or more columns under their party name and emblem;

(iii) the names of candidates of all parties are printed on the same ballot, but under their party designation;

(iv) every ballot is folded and perforated so as to separate the candidates of one party from those of the other parties and so as to enable the elector to separate the part of the ballot containing the names of the party of his choice from the remainder of the ballot; and

(v) the side edges of all ballots are perforated so that the outside sections of the ballots, when detached, are similar in appearance to inside sections when detached.

(e) After marking a municipal primary ballot, the voter shall:

(i) detach the part of the ballot containing the names of the candidates of the party he has voted from the rest of the ballot;

(ii) fold the detached part so that its face is concealed and deposit it in the ballot box; and

(iii) fold the remainder of the ballot containing the names of the candidates of the parties for whom the elector did not vote and deposit it in the blank ballot box.

(f) Immediately after the canvass, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

Section 36. Section 20A-9-502 is amended to read:

20A-9-502. Certificate of nomination -- Contents -- Circulation -- Verification.

(1) The candidate shall:

(a) prepare a certificate of nomination in substantially the following form:

"State of Utah, County of _____

I, _____, declare my intention of becoming an unaffiliated candidate for the political group designated as ____ for the office of ____. I do solemnly swear that I can qualify to hold that office both legally and constitutionally if selected, and that I reside at ____ Street, in the city of ____, county of ____, state of Utah, zip code ____, phone ____, and that I am providing, or have provided, the required number of holographic signatures of registered voters required by law; that as a candidate at the next election I will not knowingly violate any election or campaign law; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot.

_____

Subscribed and sworn to before me this _____(month\day\year).

_____

Notary Public (or other officerqualified to administer oaths)"; and

(b) attach signature sheets to the certificate that contain a place for the registered voter's holographic signature, a place for the registered voter to print [~~his~~] the registered voter's name, and a place for the registered voter's address.

(2) (a) The candidate shall circulate the nomination petition and submit it to the county clerk for certification when the petition has been completed by:

(i) at least 1,000 registered voters residing within the state when the nomination is for an office to be filled by the voters of the entire state; or

(ii) at least 300 registered voters residing within a political division or at least 5% of the registered voters residing within a political division, whichever is less, when the nomination is for an office to be filled by the voters of any political division smaller than the state.

(b) In reviewing the petition, the county clerk shall count and certify only those persons who signed the petition with a holographic signature who:

(i) are registered voters within the political division that the candidate seeks to represent; and

(ii) did not sign any other certificate of nomination for that office.

(c) The candidate may supplement or amend the certificate of nomination at any time on or before the filing deadline.

Section 37. Section 20A-11-103 is amended to read:

20A-11-103. Notice of pending interim and summary reports -- Form of submission -- Public availability.

(1) (a) Except as provided under Subsection (1)(b), 10 days before an interim report or summary report is due under this chapter or Chapter 12, Part 2, Judicial Retention Elections, the chief election officer shall inform the filing entity by postal mail or, if requested by the filing entity, by electronic mail:

(i) that the financial statement is due;

(ii) of the date that the financial statement is due; and

(iii) of the penalty for failing to file the financial statement.

(b) Notwithstanding the provisions of Subsection (1)(a), under this section the chief election officer is not required to provide notice:

(i) to a candidate or political party of the financial statement that is due before the candidate's political convention;

(ii) of a financial statement due in connection with a public hearing for an initiative under the requirements of Section 20A-7-204.1; or

(iii) to a corporation or labor organization, as defined in Section 20A-11-1501.

(2) A filing entity shall electronically file a financial statement via electronic mail or the Internet according to specifications established by the chief election officer.

(3) (a) A financial statement is considered timely filed if it is received by the chief election officer's office before the close of regular office hours on the date that it is due.

(b) A chief election officer may extend the time in which a filing entity is required to file a financial statement if a filing entity notifies the chief election officer of the existence of an extenuating circumstance that is outside the control of the filing entity.

(4) Notwithstanding any provision of Title 63G, Chapter 2, Government Records Access and Management Act, the lieutenant governor shall:

(a) make each campaign finance statement filed by a candidate available for public inspection and copying no later than one business day after the statement is filed; and

(b) post an electronic copy or the contents of each financial statement in a searchable format on a website established by the lieutenant governor:

(i) for campaign finance statements submitted to the lieutenant governor under the requirements of Section 10-3-208 or Section 17-16-6.5, no later than seven business days after the date of receipt of the campaign finance statement; or

(ii) for a summary report or interim report filed under the requirements of this chapter or Chapter 12, Part 2, Judicial Retention Elections, no later than three business days after the date the statement is electronically filed.

(5) If a municipality, under Section 10-3-208, or a county, under Section 17-16-6.5, elects to provide campaign finance disclosure on its own website, rather than through the lieutenant governor, the website established by the lieutenant governor shall contain a link or other access point to the municipality or county website.

Section 38. Repealer.

This bill repeals:

Section 20A-7-206.5, Financial disclosure -- Paid circulators.

Section 39. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 18
H. B. 116
Passed March 4, 2011
Approved March 15, 2011
Effective May 10, 2011

UTAH IMMIGRATION ACCOUNTABILITY AND ENFORCEMENT AMENDMENTS

Chief Sponsor: Bill Wright
Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:

This bill modifies general government provisions to address issues related to immigration and aliens.

Highlighted Provisions:

This bill:

- enacts the Utah Immigration Accountability and Enforcement Act, including:
  - defining terms;
  - creating the Immigration Act Restricted Account;
  - addressing information related to immigration status being sent, received, or maintained;
  - requiring implementation to be consistent with federal laws, civil rights, and other constitutional protections;
  - providing for severability of specified provisions;
  - establishing the guest worker program;
  - addressing federal waivers, exemptions, or authorizations;
  - providing for coordination with other federal or state laws or programs, including income tax withholding and the imposition of a fee;
  - providing for when a permit is to be obtained and the uses for a permit;
  - addressing eligibility criteria to obtain or maintain a permit;
  - establishing the application and renewal process;
  - imposing conditions during permit term;
  - addressing proficiency standards for English;
  - addressing verification of permits and the protected status of information;
  - addressing prohibited conduct;
  - providing for administrative and criminal penalties;
  - providing for sharing of information related to enforcement;
  - addressing employee verification and employer sanctions for employing an unauthorized alien who does not hold a permit;
  - consolidating provisions in various parts of the Utah Code into the chapter; and
  - imposing additional requirements to verify lawful presence in the United States to receive certain public benefits;
- provides a repeal date for the Private Employer Verification Act;
- creates the Identity Theft Restricted Account from which victims of identity theft may be paid actual damages;
- enacts the Illegal Immigration Enforcement Act, including:
  - defining terms;
  - providing for when a law enforcement officer is required or permitted to request verification of immigration status;
  - establishing what documents are to be provided a law enforcement officer; and
  - requiring implementation to be consistent with federal law, civil rights, and other constitutional protections; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 497, Utah Illegal Immigration Enforcement Act, by providing substantive amendments.

Utah Code Sections Affected:

AMENDS:

63G-2-206, as last amended by Laws of Utah 2009, Chapter 344
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
63J-1-602.4, as enacted by Laws of Utah 2010, Chapter 265
67-5-22.7, as enacted by Laws of Utah 2009, Chapter 30
76-10-2901, as enacted by Laws of Utah 2008, Chapter 26
77-7-2, as last amended by Laws of Utah 2008, Chapter 293

ENACTS:

63G-12-101, Utah Code Annotated 1953
63G-12-102, Utah Code Annotated 1953
63G-12-103, Utah Code Annotated 1953
63G-12-104, Utah Code Annotated 1953
63G-12-105, Utah Code Annotated 1953
63G-12-106, Utah Code Annotated 1953
63G-12-201, Utah Code Annotated 1953
63G-12-202, Utah Code Annotated 1953
63G-12-203, Utah Code Annotated 1953
63G-12-204, Utah Code Annotated 1953
63G-12-205, Utah Code Annotated 1953
63G-12-206, Utah Code Annotated 1953
63G-12-207, Utah Code Annotated 1953
63G-12-208, Utah Code Annotated 1953
63G-12-209, Utah Code Annotated 1953
63G-12-210, Utah Code Annotated 1953
63G-12-211, Utah Code Annotated 1953
63G-12-212, Utah Code Annotated 1953
63G-12-301, Utah Code Annotated 1953
63G-12-303, Utah Code Annotated 1953
63G-12-304, Utah Code Annotated 1953
63G-12-305, Utah Code Annotated 1953
63G-12-306, Utah Code Annotated 1953
63I-2-173, Utah Code Annotated 1953
76-9-1001, Utah Code Annotated 1953
76-9-1002, Utah Code Annotated 1953
76-9-1003, Utah Code Annotated 1953
76-9-1004, Utah Code Annotated 1953
76-9-1005, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
63G-12-302, (Renumbered from 63G-11-103, as last amended by Laws of Utah 2009, Chapter 138)
63G-12-401, (Renumbered from 63G-11-102, as last amended by Laws of Utah 2010, Chapter 281)
63G-12-402, (Renumbered from 63G-11-104, as last amended by Laws of Utah 2010, Chapter 191)

Utah Code Sections Affected by Coordination Clause:
76-9-1001, Utah Code Annotated 1953
76-9-1002, Utah Code Annotated 1953
76-9-1003, Utah Code Annotated 1953
76-9-1004, Utah Code Annotated 1953
76-9-1005, Utah Code Annotated 1953

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

Section 1. Section 63G-2-206 is amended to read:

63G-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose;

(d) is one that collects information for presentence, probationary, or parole purposes; or

(e) (i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and

(ii) requests the record in relation to the Legislature's duties including:

(A) the preparation or review of a legislative proposal or legislation;

(B) appropriations; or

(C) an investigation or review conducted by the Legislature or a legislative committee.

(2) (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(iii) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

(b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

(4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) A contractor or a private provider may receive information under this section only if:

(i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series;

(ii) the record or record series it requests:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(8) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining; [~~and~~]

(b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c)[~~.~~]; and

(c) a record described in Section 63G-12-210.

(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 2. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the

property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator

elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; [~~and~~]

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality[~~.~~]; and

(61) a record described in Section 63G-12-210.

Section 3. Section 63G-12-101 is enacted to read:

CHAPTER 12. UTAH IMMIGRATION ACCOUNTABILITY AND ENFORCEMENT ACT

Part 1. General Provisions

63G-12-101. Title.

This chapter is known as the "Utah Immigration Accountability and Enforcement Act."

Section 4. Section 63G-12-102 is enacted to read:

63G-12-102. Definitions.

As used in this chapter:

(1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a federally qualified high deductible health plan.

(2) "Department" means the Department of Public Safety created in Section 53-1-103.

(3) "Employee" means an individual employed by an employer under a contract for hire.

(4) "Employer" means a person who has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.

(5) "E-verify program" means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. Sec. 1324a, known as the e-verify program;

(6) "Family member" means for an undocumented individual:

(a) a member of the undocumented individual's immediate family;

(b) the undocumented individual's grandparent;

(c) the undocumented individual's sibling;

(d) the undocumented individual's grandchild;

(e) the undocumented individual's nephew;

(f) the undocumented individual's niece;

(g) a spouse of an individual described in this Subsection (6); or

(h) an individual who is similar to one listed in this Subsection (6).

(7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.

(8) "Guest worker" means an undocumented individual who holds a guest worker permit.

(9) "Guest worker permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-205.

(10) "Immediate family" means for an undocumented individual:

(a) the undocumented individual's spouse; or

(b) a child of the undocumented individual if the child is:

(i) under 21 years of age; and

(ii) unmarried.

(11) "Immediate family permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-206.

(12) "Permit" means a permit issued under Part 2, Guest Worker Program, and includes:

(a) a guest worker permit; and

(b) an immediate family permit.

(13) "Permit holder" means an undocumented individual who holds a permit.

(14) "Private employer" means an employer who is not the federal government or a public employer.

(15) "Program start date" means the day on which the department is required to implement the program under Subsection 63G-12-202(3).

(16) "Public employer" means an employer that is:

(a) the state of Utah or any administrative subunit of the state;

(b) a state institution of higher education, as defined in Section 53B-3-102;

(c) a political subdivision of the state including a county, city, town, school district, local district, or special service district; or

(d) an administrative subunit of a political subdivision.

(17) "Program" means the Guest Worker Program described in Section 63G-12-201.

(18) "Relevant contact information" means the following for an undocumented individual:

(a) the undocumented individual's name;

(b) the undocumented individual's residential address;

(c) the undocumented individual's residential telephone number;

(d) the undocumented individual's personal email address;

(e) the name of the person with whom the undocumented individual has a contract for hire;

(f) the name of the contact person for the person listed in Subsection (18)(e);

(g) the address of the person listed in Subsection (18)(e);

(h) the telephone number for the person listed in Subsection (18)(e);

(i) the names of the undocumented individual's immediate family members;

(j) the names of the family members who reside with the undocumented individual; and

(k) any other information required by the department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

(19) "Restricted account" means the Immigration Act Restricted Account created in Section 63G-12-103.

(20) "Serious felony" means a felony under:

(a) Title 76, Chapter 5, Offenses Against the Person;

(b) Title 76, Chapter 5a, Sexual Exploitation of Children;

(c) Title 76, Chapter 6, Offenses Against Property;

(d) Title 76, Chapter 7, Offenses Against the Family;

(e) Title 76, Chapter 8, Offenses Against the Administration of Government;

(f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and

(g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.

(21) (a) "Status verification system" means an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision for a purpose authorized under this section.

(b) "Status verification system" includes:

(i) the e-verify program;

(ii) an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

(iii) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or

(iv) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).

(22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).

(23) "Undocumented individual" means an individual who:

(a) lives or works in the state; and

(b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States.

(24) "U-verify program" means the verification procedure developed by the department in accordance with Section 63G-12-210.

Section 5. Section 63G-12-103 is enacted to read:

63G-12-103. Immigration Act Restricted Account.

(1) There is created a restricted account within the General Fund known as the "Immigration Act Restricted Account."

(2) (a) The restricted account shall consist of:

(i) a fee collected under this chapter;

(ii) a fine collected under Section 63G-12-207;

(iii) civil penalties imposed under Section 63G-12-211 or 63G-12-307;

(iv) money appropriated to the restricted account by the Legislature; and

(v) interest earned on the restricted account.

(b) The restricted account shall earn interest.

(3) The Legislature may appropriate money from the restricted account to:

(a) the department and the Office of the Governor to pay the costs associated with the implementation of Section 63G-12-202;

(b) the department to administer this chapter;

(c) the State Tax Commission for costs associated with implementing Section 63G-12-203;

(d) the attorney general for costs associated with:

(i) litigation related to this chapter;

(ii) a multi-agency strike force created under Section 67-5-22.7; or

(iii) a memorandum of understanding executed under Section 67-5-28; and

(e) the Identity Theft Restricted Account created in Section 67-5-22.7.

Section 6. Section 63G-12-104 is enacted to read:

63G-12-104. Determining immigration status -- Transfer or maintenance of information.

Except as limited by federal law and this chapter, any state or local governmental agency is not restricted or prohibited in any way from sending, receiving, or maintaining information related to the lawful or unlawful immigration status of an individual by communicating with any federal, state, or local governmental entity for any lawful purpose, including:

(1) determining an individual's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by a political subdivision of this state;

(2) confirming an individual's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(3) if the individual is an alien, determining if the individual is in compliance with the federal registration laws under 8 U.S.C. Sec. 1301 through 1306; or

(4) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. Sec. 1373.

Section 7. Section 63G-12-105 is enacted to read:

63G-12-105. Implementation to be consistent with federal law and civil rights.

A state or local agency shall implement this chapter in a manner that:

(1) is consistent with federal laws that regulate immigration;

(2) protects the civil rights of all persons; and

(3) respects the privileges and immunities of United States citizens.

Section 8. Section 63G-12-106 is enacted to read:

63G-12-106. Severability.

(1) If a provision of Part 2, Guest Worker Program, or the application of a provision to a person or circumstance is held invalid, the remainder of this chapter may not be given effect without the invalid provision or application so that the provisions of this chapter are not severable.

(2) The following provisions are severable from this chapter:

(a) Title 76, Chapter 9, Part 10, Illegal Immigration Enforcement Act;

(b) Section 76-10-2901; and

(c) Section 77-7-2.

Section 9. Section 63G-12-201 is enacted to read:

Part 2. Guest Worker Program

63G-12-201. Department to create program.

(1) The department shall administer a program known as the "Guest Worker Program" created by this part. Under this program, the department shall:

(a) seek one or more waivers, exemptions, or authorizations to implement the program as provided in Section 63G-12-202;

(b) issue a permit as provided in Section 63G-12-207;

(c) establish fees in accordance with Section 63J-1-504 for a filing or service required by this part;

(d) take action under Section 63G-12-211; and

(e) report annually to the governor and the Legislature.

(2) The department may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to the extent expressly provided for in this part.

(3) In implementing this part, the department shall cooperate with other state agencies to minimize any duplication in databases or services required under this part.

Section 10. Section 63G-12-202 is enacted to read:

63G-12-202. Federal waivers, exemptions, or authorizations -- Implementation without waiver, exemption, or authorization.

(1) The department, under the direction of the governor, shall seek one or more federal waivers, exemptions, or authorizations to implement the program.

(2) The governor shall actively participate in the effort to obtain one or more federal waivers, exemptions, or authorizations under this section.

(3) The department shall implement the program the sooner of:

(a) 120 days after the day on which the governor finds that the state has the one or more federal waivers, exemptions, or authorizations needed to implement the program; or

(b) July 1, 2013.

Section 11. Section 63G-12-203 is enacted to read:

63G-12-203. Coordination with other federal or state laws or programs.

(1) To the extent feasible, the department shall coordinate the implementation of the program with other existing state and federal laws that relate to immigration and labor, including laws pertaining to obtaining the privilege to drive and to report citizenship status.

(2) (a) If a permit holder is not issued a Social Security number, the State Tax Commission shall, by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a means for a person who receives services from a permit holder to withhold from compensation paid to the permit holder an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income taxes that would be imposed by state law if the permit holder were an employee with a Social Security number.

(b) If a waiver, exemption, or authorization described in Section 63G-12-202 provides for the issuance of a Social Security number to a permit holder, a person who receives services from a permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

(c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.

(d) To the extent feasible and consistent with a waiver, exemption, or authority entered into under Section 63G-12-202, the State Tax Commission shall work with the applicable federal government agencies to ensure that the withholding provided for under this Subsection (2) is compatible with a federal process by which employment taxes are collected that would be imposed under federal law if a permit holder were an employee with a Social Security number.

(e) (i) The State Tax Commission shall impose a fee on a person who hires a permit holder as an employee in accordance with this Subsection (2)(e):

(A) if as of the program start date the federal government does not collect or provide for the withholding of federal employment taxes;

(B) beginning the first day of the calendar quarter immediately following the program start date; and

(C) ending the last day of the calendar quarter in which the federal government begins to collect or provide for the withholding of federal employment taxes.

(ii) The State Tax Commission shall set the fee equal to the amount that, as closely as possible, equals the federal employment taxes that would be imposed by federal law if the permit holder were hired as an employee with a Social Security number.

(iii) The State Tax Commission shall collect the fee in the same manner that it collects state income taxes withheld in accordance with this Subsection (2).

(iv) The State Tax Commission may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to establish the procedures for the collection of the fee.

(v) The State Tax Commission shall deposit the fee into the restricted account.

(vi) The State Tax Commission may have access to a record of the department made under Section 63G-12-210 to the extent necessary to impose a fee under this Subsection (2)(e).

(3) The department shall facilitate the use in this state of other employer based work programs that meet the needs of Utah employers by using workers who are not working in Utah and who are not United States citizens. Nothing in this part prevents a person from using an employer based work program described in this Subsection (3) that exists under the auspices of a foreign government in cooperation with the United States government.

(4) A permit holder is not eligible for unemployment compensation.

Section 12. Section 63G-12-204 is enacted to read:

63G-12-204. Obtaining a permit -- Uses of permit.

(1) An undocumented individual shall obtain a permit:

(a) before providing services to a person in this state under a contract for hire; or

(b) in accordance with Subsection (2), by no later than 30 days from the day on which the undocumented individual enters into a contract for hire.

(2) (a) By rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, the

department shall provide a procedure under which a person may hire an undocumented individual who does not hold a permit pending the undocumented individual obtaining a permit within 30 days of the day on which the undocumented individual is hired to provide services.

(b) An undocumented individual may not provide services under a contract for hire to a person for more than 30 days during a two-year calendar period without obtaining a permit as provided under this part.

(3) Subject to Subsection (4), a permit is considered an identification document for purposes of Section 63G-12-401, and may be used as identification or proof of the permit holder's age for any state or local government required purpose.

(4) An undocumented individual may not use a permit:

(a) to establish entitlement to a federal, state, or local benefit as described in Section 63G-12-402; or

(b) to obtain work or provide services in a state other than Utah.

Section 13. Section 63G-12-205 is enacted to read:

63G-12-205. Eligibility criteria to obtain and maintain a guest worker permit.

(1) To be eligible to obtain or maintain a guest worker permit, an undocumented individual shall:

(a) (i) be 18 years of age or older; or

(ii) if younger than 18 years of age, have the permission of a parent or guardian;

(b) live in Utah;

(c) have worked or lived in Utah before May 10, 2011;

(d) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act;

(e) provide documentation of a contract for hire under which the undocumented individual begins to provide services within at least 30 days of the day on which the undocumented individual obtains the permit;

(f) (i) agree to a criminal background check described in Subsection (3); and

(ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a serious felony;

(g) provide evidence satisfactory to the department that the person would not be inadmissible for public health grounds under 8 U.S.C. Sec. 1182;

(h) (i) be covered by a basic health insurance plan; or

(ii) provide evidence satisfactory to the department that the undocumented individual has no medical debt that is past due and agrees to have no medical debt that is past due during the term of the permit; and

(i) (i) hold a driving privilege card issued in accordance with Section 53-3-207; or

(ii) provide evidence satisfactory to the department that the undocumented individual will not drive a motor vehicle in the state.

(2) The department may by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide for the documentation required to establish eligibility under Subsection (1). When making a rule under this section, the department shall use federal standards as a guideline to avoid unnecessary duplication and additional costs.

(3) (a) The department shall require an undocumented individual applying for a guest worker permit, or renewing a guest worker permit, to submit to a criminal background check as a condition of receiving or renewing the guest worker permit.

(b) An undocumented individual required to submit to a criminal background check under Subsection (3)(a), shall:

(i) submit a fingerprint card in a form acceptable to the department; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation, including the secure communities program when possible.

(c) For an undocumented individual who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system and secure communities program.

(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department to determine eligibility to obtain a permit.

(e) The department shall:

(i) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under this Subsection (3); and

(ii) in accordance with Section 63J-1-504, charge the undocumented individual applying for the

permit a fee equal to the aggregate of the costs incurred by the department under this Subsection (3) and the amount paid under Subsection (3)(e)(i).

Section 14. Section 63G-12-206 is enacted to read:

63G-12-206. Eligibility to obtain and maintain an immediate family permit.

To be eligible to obtain or maintain an immediate family permit, an undocumented individual shall:

(1) live in Utah;

(2) be a member of a guest worker's immediate family; and

(3) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

Section 15. Section 63G-12-207 is enacted to read:

63G-12-207. Application and renewal process.

(1) The department may not issue a permit under this part until the program is implemented under Section 63G-12-202.

(2) The department shall:

(a) create a permit that:

(i) is of impervious material that is resistant to wear or damage; and

(ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and

(b) ensure that a permit:

(i) includes a photograph of the undocumented individual to whom the permit is issued;

(ii) prominently states the day on which the permit expires; and

(iii) prominently states the type of permit.

(3) A permit expires two years from the day on which the department issues the permit.

(4) (a) Before an undocumented individual may apply for an initial permit under this part the undocumented individual shall commit to pay a fine equal to:

(i) $1,000, if the undocumented individual enters into the United States legally, but at the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or

(ii) $2,500, if the undocumented individual enters into the United States illegally.

(b) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall make rules that provide for:

(i) how an undocumented individual demonstrates a commitment to pay the fine required under Subsection (4)(a);

(ii) one or more payment plans that an undocumented individual may use to pay a fine required under Subsection (4)(a); and

(iii) the consequences for failure to pay the entire amount of a fine required under Subsection (4)(a).

(5) After committing to pay the fine in accordance with Subsection (4), to apply for or renew a permit, an undocumented individual shall submit to the department, in a form acceptable under this part:

(a) an application;

(b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;

(c) for a renewal, documentation of efforts to comply with Section 63G-12-209;

(d) a signed statement verifying the information in the application and documentation; and

(e) a fee established by the department in accordance with Section 63J-1-504.

(6) If an undocumented individual submits a complete application under Subsection (5) and the department determines that the undocumented individual meets the criteria of Section 63G-12-205 or 63G-12-206, the department shall issue or renew:

(a) a guest worker permit, if the undocumented individual qualifies under Section 63G-12-205; and

(b) an immediate family permit, if the undocumented individual qualifies under Section 63G-12-206.

(7) An undocumented individual may appeal a denial of a permit under this section in accordance with Chapter 4, Administrative Procedures Act.

(8) (a) If a waiver, exemption, or authorization provides for the following, in addition to the requirements of Subsection (5), for an application to be considered complete for purposes of Subsection (6) an undocumented individual applying for a guest worker permit shall:

(i) post a bond with the department in the amount of $10,000 against which the department may bring an action for a violation of this part; or

(ii) provide written certification by the undocumented individual's country of origin in accordance with Subsection (8)(b) of a guarantee of compliance with this part.

(b) (i) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for what the department would consider being a "guarantee of compliance" by a country of origin for purposes of Subsection (8)(a).

(ii) A rule made under this Subsection (8)(b) shall provide that the department may not accept a guarantee of compliance from a specific foreign

country if the department determines a significant percentage of the guest workers who submit a guarantee of compliance from that foreign country cannot be located after or during the term of a guest worker permit.

Section 16. Section 63G-12-208 is enacted to read:

63G-12-208. Conditions during permit term.

(1) A permit holder shall continue to meet the eligibility criteria under Section 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.

(2) A permit is automatically revoked if after issuance of the permit:

(a) the permit holder to whom it is issued is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or has resolved by diversion or its equivalent a serious felony;

(b) for a guest worker permit, the permit holder to whom it is issued does not provide services under a contract for hire for more than one year; or

(c) for an immediate family permit, the guest worker permit under which the immediate family member's permit is issued is revoked or expires under this part.

Section 17. Section 63G-12-209 is enacted to read:

63G-12-209. Proficiency standards for English.

(1) A permit holder shall in good faith use best efforts to become proficient in the English language at or above the equivalent to an intermediate level on a language proficiency assessment test used by the State Office of Education for purposes of secondary school students.

(2) An undocumented individual shall pay the costs of complying with this section.

Section 18. Section 63G-12-210 is enacted to read:

63G-12-210. Verification of valid permit -- Protected status of information.

(1) (a) The department shall develop a verification procedure by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, for a person who hires a permit holder to verify with the department that the permit is valid as required by Section 63G-12-301.

(b) The verification procedure adopted under this Subsection (1) shall:

(i) be substantially similar to the employer requirements to verify federal employment status under the e-verify program; and

(ii) provide that an undocumented individual may appeal a determination that a permit is invalid in accordance with Chapter 4, Administrative Procedures Act.

(2) Subject to Section 63G-12-212, a record under this part is a protected record under Chapter 2, Government Records Access and Management Act, except that a record may not be shared under Section 63G-2-206, unless:

(a) requested by the Office of Legislative Auditor General in accordance with Section 36-12-15;

(b) disclosed to the State Tax Commission as provided in Subsection 63G-12-203(2)(e)(vi); or

(c) disclosed to a federal government entity in accordance with this part or a waiver, exemption, or authorization described in Section 63G-12-202.

(3) The state is not liable to any person for:

(a) the design, implementation, or operation of a verification procedure under this part;

(b) the collection and disclosure of information as part of a verification procedure under this part; or

(c) the determination that a permit is invalid.

Section 19. Section 63G-12-211 is enacted to read:

63G-12-211. Prohibited conduct -- Administrative penalties -- Criminal penalties.

(1) A permit holder may not file for or receive unemployment benefits.

(2) A person may not:

(a) furnish false or forged information or documentation in support of an application;

(b) alter the information on a permit;

(c) if the person is a guest worker, be reported absent from work for 10 consecutive days without the approval of the person who hires the guest worker;

(d) allow an individual to use a permit if the individual is not entitled to use the permit;

(e) display or represent that a permit is issued to an individual, if the permit is not issued to the individual;

(f) display a revoked permit as a valid permit;

(g) knowingly or with reckless disregard acquire, use, display, or transfer an item that purports to be a valid permit, but that is not a valid permit; or

(h) otherwise violate this part.

(3) For a violation described in Subsections (1) and (2), the department may:

(a) suspend, limit, or revoke and repossess a permit;

(b) impose a civil penalty not to exceed $750 for each violation; or

(c) take a combination of actions under this section.

(4) A person is guilty of a class B misdemeanor if the person:

(a) furnishes false or forged information or documentation in support of an application; or

(b) alters the information on a permit.

Section 20. Section 63G-12-212 is enacted to read:

63G-12-212. Sharing of information related to enforcement.

(1) The department shall provide the notice described in Subsection (2), if the department determines that an undocumented individual:

(a) has the undocumented individual's permit revoked; or

(b) permits the undocumented individual's permit to expire and the department has reason to believe that the undocumented individual continues to reside in the state.

(2) (a) The department shall provide the notice required by Subsection (1) to:

(i) Utah's attorney general; and

(ii) United States Immigration and Customs Enforcement.

(b) The notice described in Subsection (2)(a) shall:

(i) include:

(A) the last known address of the undocumented individual; and

(B) the basis of the notice described in Subsection (1); and

(ii) be sent promptly after the day on which the time to appeal, if any, the action that is the basis for the notification under Subsection (1) ends.

Section 21. Section 63G-12-301 is enacted to read:

Part 3. Employee Verification and Employer Sanctions

63G-12-301. Employing unauthorized alien -- Verification of employment eligibility.

(1) On and after the program start date, an employer may not knowingly employ an unauthorized alien who does not hold a permit.

(2) On and after the program start date, a private employer employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee:

(a) through the e-verify program if the individual does not hold a permit; and

(b) through the u-verify program if the individual holds a permit.

(3) A private employer shall keep a record of the verification required by Subsection (2) for the longer of:

(a) the duration of the employee's employment; or

(b) at least three years from the date of verification.

(4) On and after the program start date, a private employer shall terminate the employment of an undocumented individual if the undocumented individual is determined by the department to not hold a valid permit.

Section 22. Section 63G-12-302, which is renumbered from Section 63G-11-103 is renumbered and amended to read:

[~~63G-11-103~~]. 63G-12-302. Status verification system -- Registration and use -- Performance of services -- Unlawful practice.

(1) As used in this section:

(a) "Contract" means an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer and includes a sole source contract.

(b) "Contractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

[~~(c) "Public employer" means a department, agency, instrumentality, or political subdivision of the state.~~]

[~~(d) (i) "Status Verification System" means an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C., Sec. 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision for a purpose authorized under this section.~~]

[~~(ii) "Status Verification System" includes:~~]

[~~(A) the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a, known as the E-verify Program;~~]

[~~(B) an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;~~]

[~~(C) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or~~]

[~~(D) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (1)(d)(ii)(A), (B), or (C).~~]

[~~(e) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).~~]

(2) (a) [~~Each~~] Subject to Subsection (5), a public employer shall register with and use a Status

Verification System to verify the federal employment authorization status of a new employee.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) (a) [~~Beginning~~] Subject to Subsection (5), beginning July 1, 2009:

(i) a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the state; and

(ii) a contractor shall register and participate in the Status Verification System in order to enter into a contract with a public employer.

(b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually responsible for verifying the employment status of only new employees who work under the contractor's supervision or direction and not those who work for another contractor or subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

(ii) Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified through the Status Verification System the employment status of each new employee of the respective contractor or subcontractor.

(c) Subsection (3)(a) does not apply to a contract:

(i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical performance of services within the state on or after July 1, 2009; or

(ii) that involves underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.

(4) (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who:

(i) the employing entity knows, or reasonably should have known, is an unauthorized alien hired on or after July 1, 2009; and

(ii) is working in the state in a job category:

(A) that requires equal skill, effort, and responsibility; and

(B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec. 206 (d)(1), as the job category held by the discharged employee.

(b) An employing entity, which on the date of a discharge in question referred to in Subsection (4)(a) is enrolled in and using the Status Verification System to verify the employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this section.

(c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).

(5) On and after the program start date:

(a) a public employer, after hiring an employee, shall verify the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the u-verify program if the individual holds a permit; and

(b) a contractor is considered to be in compliance with this section if, after hiring an employee, the contractor verifies the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the u-verify program if the individual holds a permit.

Section 23. Section 63G-12-303 is enacted to read:

63G-12-303. Liability protections.

(1) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's unlawful hiring of an unauthorized alien if:

(a) the private employer complies with Subsection 63G-12-301(2); and

(b) the information obtained after verification under Subsection 63G-12-301(2) indicates that:

(i) the employee's federal legal status allowed the private employer to hire the employee; or

(ii) on and after the program start date, the employee held a valid permit.

(2) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's refusal to hire an individual if:

(a) the private employer complies with Subsection 63G-12-301(2); and

(b) the information obtained after verification under Subsection 63G-12-301(2) indicates that the employee:

(i) was an unauthorized alien; and

(ii) on and after the program start date, does not hold a valid permit.

(3) This chapter does not create a cause of action, on the basis of discrimination or otherwise, for not hiring an individual who holds a permit.

(4) This section applies to a private employer that verifies the employment eligibility of a new employee as described in Subsection 63G-12-301(2) regardless of whether the private employer has less than 15 employees within the state.

Section 24. Section 63G-12-304 is enacted to read:

63G-12-304. Voluntary registration by private employer certifying participation in verification.

(1) (a) On or after the program start date, a private employer may register with the department certifying that the private employer is in compliance with Subsection 63G-12-301(2).

(b) A private employer may register with the department under this section regardless of whether the private employer is required to comply with Subsection 63G-12-301(2).

(2) To register or renew a registration with the department under this part, a private employer shall:

(a) file a registration statement with the department that certifies compliance with Subsection 63G-12-301(2); and

(b) pay a fee established by the department in accordance Section 63J-1-504 that reflects the cost of registering employers under this section and publishing the list described in Subsection (5).

(3) A registration under this part expires every two years on the anniversary of the day on which the registration is filed with the department.

(4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for:

(a) the form of a registration statement under this section;

(b) the process of filing a registration statement under this section; and

(c) the process of renewing a registration statement under this section.

(5) On and after the program start date, the department shall publish electronically a list of private employers who register under this section on a website accessible to the general public without a charge.

(6) The department shall coordinate with the Department Commerce to transfer the registration operated by the Department of Commerce to the department effective on the program start date.

Section 25. Section 63G-12-305 is enacted to read:

63G-12-305. Administrative actions -- Defenses.

(1) On and after the program start date and in accordance with Chapter 4, Administrative Procedures Act, the department may bring agency action against a private employer who violates Subsection 63G-12-301(1) to impose a penalty described in Section 63G-12-306.

(2) (a) To determine whether an employee is an unauthorized alien for purposes of Subsection (1), the department shall consider only the federal government's determination pursuant to 8 U.S.C. Sec. 1373(c).

(b) The federal government's determination creates a rebuttable presumption of the employee's lawful status. The department may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).

(3) For the purposes of this part, proof of verifying the employment authorization in accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien who does not hold a valid permit.

(4) (a) For the purposes of this section, an employer that establishes that the employer has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien.

(b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

Section 26. Section 63G-12-306 is enacted to read:

63G-12-306. Penalties.

(1) As used in this section:

(a) "Applicable license" means a license issued under:

(i) Title 32B, Alcoholic Beverage Control Act;

(ii) Title 58, Occupations and Professions; or

(iii) Title 61, Securities Division - Real Estate Division.

(b) "First violation" means the first time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).

(c) "Second violation" means the second time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).

(d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1) committed after a second violation.

(2) (a) On or after the program start date, a private employer who violates Subsection 63G-12-301(1) is subject to a penalty provided in this section under an action brought by the department in accordance with Section 63B-12-305.

(b) For a first violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed $100 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.

(c) For a second violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed $500 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.

(d) For a third or subsequent violation of Subsection 63-12-301(1), the department shall:

(i) order the revocation of the one or more applicable licenses that are issued to an owner, officer, director, manager, or other individual in a similar position for the private employer for a period not to exceed one year; or

(ii) if no individual described in Subsection (2)(d)(i) holds an applicable license, impose a civil penalty on the private employer not to exceed $10,000.

(3) (a) If the department finds a third or subsequent violation, the department shall notify the Department of Commerce and the Department of Alcoholic Beverage Control once the department's order:

(i) is not appealed, and the time to appeal has expired; or

(ii) is appealed, and is affirmed, in whole or in part on appeal.

(b) The notice required under Subsection (3)(a) shall state:

(i) that the department has found a third or subsequent violation;

(ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is to be revoked; and

(iii) the time period for the revocation, not to exceed one year.

(c) The department shall base its determination of the length of revocation under this section on evidence or information submitted to the department during the action under which a third or subsequent violation is found, and shall consider the following factors, if relevant:

(i) the number of unauthorized aliens who do not hold a permit that are employed by the private employer;

(ii) prior misconduct by the private employer;

(iii) the degree of harm resulting from the violation;

(iv) whether the private employer made good faith efforts to comply with any applicable requirements;

(v) the duration of the violation;

(vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and

(vii) any other factor the department considers appropriate.

(4) Within 10 business days of receipt of notice under Subsection (3), the Department of Commerce and the Department of Alcoholic Beverage Control shall:

(a) (i) if the Department of Commerce or Alcoholic Beverage Control Commission has issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding any other law, revoke the applicable license; and

(ii) notify the department that the applicable license is revoked; or

(b) if the Department of Commerce or Alcoholic Beverage Control Commission has not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the department that an applicable license has not been issued to an individual described in Subsection (2)(d)(i).

(5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the department shall notify the Utah State Bar of the third and subsequent violation.

Section 27. Section 63G-12-401, which is renumbered from Section 63G-11-102 is renumbered and amended to read:

Part 4. Identification and General Verification

~~[63G-11-102]~~. 63G-12-401. Creation of identity documents -- Issuance to citizens, nationals, and legal permanent resident aliens -- Exceptions.

(1) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and possess an engraved plate or other device for the printing of an identification document:

(a) a federal, state, or local government agency for employee identification, which is designed to identify the bearer as an employee;

(b) a federal, state, or local government agency for purposes authorized or required by law or a legitimate purpose consistent with the duties of the agency, including such documents as voter identification cards, identification cards, passports, birth certificates, and Social Security cards; and

(c) a public school or state or private educational institution to identify the bearer as an administrator, faculty member, student, or employee.

(2) The name of the issuing entity shall be clearly printed upon the face of the identification document.

(3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity providing an

identity document, card, or certificate under Subsection (1)(b) or (c) shall issue the document, card, or certificate only to:

(a) a United States citizen;

(b) a national; or

(c) a legal permanent resident alien.

(4) (a) Subsection (3) does not apply to an applicant for an identification document who presents, in person, valid documentary evidence of the applicant's:

(i) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) pending or approved application for asylum in the United States;

(iii) admission into the United States as a refugee;

(iv) pending or approved application for temporary protected status in the United States;

(v) approved deferred action status; or

(vi) pending application for adjustment of status to legal permanent resident or conditional resident.

(b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c) identification document to an applicant who satisfies the requirements of Subsection (4)(a).

(ii) Except as otherwise provided by federal law, the document is valid only:

(A) during the period of time of the individual's authorized stay in the United States; or

(B) for one year from the date of issuance if there is no definite end to the individual's period of authorized stay.

(iii) An entity issuing an identification document under this Subsection (4) shall clearly indicate on the document:

(A) that it is temporary; and

(B) its expiration date.

(c) An individual may renew a document issued under this Subsection (4) only upon presentation of valid documentary evidence that the status by which the individual originally qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) (a) Subsection (3) does not apply to an identification document issued under Subsection (1)(c) that:

(i) is only valid for use on the educational institution's campus or facility; and

(ii) includes a statement of the restricted use conspicuously printed upon the face of the identification document.

(b) Subsection (3) does not apply to a license certificate, driving privilege card, or identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.

(c) Subsection (3) does not apply to a public transit pass issued by a public transit district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:

(i) is only valid for use on the public transit system; and

(ii) includes a statement of the restricted use conspicuously printed on the face of the public transit pass.

(d) Subsection (3) does not apply to a permit issued under Section 63G-12-207.

(6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Section 28. Section 63G-12-402, which is renumbered from Section 63G-11-104 is renumbered and amended to read:

[~~63G-11-104~~]. 63G-12-402. Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.

[~~(1) As used in this section, "federal program" means the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.~~]

[~~(2)~~] (1) Except as provided in Subsection [~~(4)~~] (3) or when exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who applies for:

(a) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

(b) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an agency or political subdivision of this state.

[~~(3)~~] (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

[~~(4)~~] (3) Verification of lawful presence under this section is not required for:

(a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(b) assistance for health care items and services that:

(i) are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

(ii) are not related to an organ transplant procedure;

(c) short-term, noncash, in-kind emergency disaster relief;

(d) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by the communicable disease;

(e) programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter, specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, that:

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

(iii) are necessary for the protection of life or safety;

(f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106;

(g) an applicant for a license under Section 61-1-4, if the applicant:

(i) is registered with the Financial Industry Regulatory Authority; and

(ii) files an application with the state Division of Securities through the Central Registration Depository;

(h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;

(i) a home loan that will be insured, guaranteed, or purchased by:

(i) the Federal Housing Administration, the Veterans Administration, or any other federal agency; or

(ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

(j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection [~~(4)~~] (3)(i); and

(k) an applicant for a license issued by the Department of Commerce, if the applicant provides the Department of Commerce:

(i) certification, under penalty of perjury, that the applicant is:

(A) a United States citizen;

(B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

(C) lawfully present in the United States; and

(ii) a valid driver license number for a driver license issued by:

(A) Utah on or after January 1, 2010; or

(B) a state other than Utah that as part of issuing the driver license verifies an individual's lawful presence in the United States.

[~~(5)~~] (4) (a) An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:

[~~(a)~~] (i) the applicant is a United States citizen; or

[~~(b)~~] (ii) the applicant is:

[~~(i)~~] (A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

[~~(ii)~~] (B) lawfully present in the United States.

(b) The certificate required under this Subsection (4) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

[~~(6)~~] (5) An agency or political subdivision shall verify a certification required under Subsection [~~(5)~~] (4)(b) through the federal SAVE program.

[~~(7)~~] (6) (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a certification under Subsection [~~(4)~~] (3)(k) or [~~(5)~~] (4) is subject to the criminal penalties applicable in this state for:

(i) making a written false statement under Subsection 76-8-504(2); and

(ii) fraudulently obtaining:

(A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

(B) unemployment compensation under Section 76-8-1301.

(b) If the certification constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United States Attorney General for the applicable district based upon the venue in which the application was made.

(c) If an agency or political subdivision receives verification that a person making an application for a benefit, service, or license is not a qualified alien, the agency or political subdivision shall provide the information to the Office of the Attorney General unless prohibited by federal mandate.

[~~(8)~~] (7) An agency or political subdivision may adopt variations to the requirements of this section that:

(a) clearly improve the efficiency of or reduce delay in the verification process; or

(b) provide for adjudication of unique individual circumstances where the verification procedures in this section would impose an unusual hardship on a legal resident of Utah.

[~~(9)~~] (8) It is unlawful for an agency or a political subdivision of this state to provide a state, local, or

federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.

[~~(10)~~] (9) A state agency or department that administers a program of state or local public benefits shall:

(a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance with this section; and

(b) (i) monitor the federal SAVE program for application verification errors and significant delays;

(ii) provide an annual report on the errors and delays to ensure that the application of the federal SAVE program is not erroneously denying a state or local benefit to a legal resident of the state; and

(iii) report delays and errors in the federal SAVE program to the United States Department of Homeland Security.

Section 29. Section 63I-2-173 is enacted to read:

63I-2-173. (Codified as 63I-2-213) Repeal dates -- Title 13.

Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program start date, as defined in Section 63G-12-102.

Section 30. Section 63J-1-602.4 is amended to read:

63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.

(1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.

(2) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(3) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(4) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

(5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

(6) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(7) Certain donations to the Division of Substance Abuse and Mental Health, as provided in Section 62A-15-103.

(8) Assessments for DUI violations that are forwarded to an account created by a county treasurer, as provided in Section 62A-15-503.

(9) The Risk Management Fund created under Section 63A-4-201.

(10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.

(11) The Constitutional Defense Restricted Account created in Section 63C-4-103.

(12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(13) Funding for the Medical Education Program administered by the Medical Education Council, as provided in Section 63C-8-102.

(14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63C-11-301.

(15) Funds collected for publishing the Division of Administrative Rules' publications, as provided in Section 63G-3-402.

(16) The Immigration Act Restricted Account created in Section 63G-12-103.

[~~(16)~~] (17) Money received by the military installation development authority, as provided in Section 63H-1-504.

[~~(17)~~] (18) The appropriation to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Section 63M-1-416.

[~~(18)~~] (19) The Tourism Marketing Performance Account, as provided in Section 63M-1-1406.

[~~(19)~~] (20) Certain money in the Development for Disadvantaged Rural Communities Restricted Account, as provided in Section 63M-1-2003.

[~~(20)~~] (21) Appropriations to the Utah Science Technology and Research Governing Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.

[~~(21)~~] (22) Certain money in the Rural Broadband Service Account, as provided in Section 63M-1-2303.

Section 31. Section 67-5-22.7 is amended to read:

67-5-22.7. Multi-agency strike force to combat violent and other major felony crimes associated with illegal immigration and human trafficking -- Fraudulent Documents Identification Unit.

(1) The Office of the Attorney General is authorized to administer and coordinate the operation of a multi-agency strike force to combat violent and other major felony crimes committed within the state that are associated with illegal immigration and human trafficking.

(2) The office shall invite officers of the U.S. Immigration and Customs Enforcement and state and local law enforcement personnel to participate in this mutually supportive, multi-agency strike force to more effectively utilize their combined skills, expertise, and resources.

(3) The strike force shall focus its efforts on detecting, investigating, deterring, and eradicating violent and other major felony criminal activity related to illegal immigration and human trafficking.

(4) In conjunction with the strike force and subject to available funding, the Office of the Attorney General shall establish a Fraudulent Documents Identification Unit:

(a) for the primary purpose of investigating, apprehending, and prosecuting individuals or entities that participate in the sale or distribution of fraudulent documents used for identification purposes; [~~and~~]

(b) to specialize in fraudulent identification documents created and prepared for individuals who are unlawfully residing within the state[~~.~~]; and

(c) to administer the Identity Theft Victims Restricted Account created under Subsection (5).

(5) (a) There is created a restricted account in the General Fund known as the "Identity Theft Victims Restricted Account."

(b) The Identity Theft Victims Restricted Account shall consist of money appropriated to the Identity Theft Victims Restricted Account by the Legislature.

(c) Subject to appropriations from the Legislature, beginning on the program start date, as defined in Section 63G-12-102, the Fraudulent Documents Identification Unit may expend the money in the Identity Theft Victims Restricted Account to pay a claim as provided in this Subsection (5) to a person who is a victim of identity theft prosecuted under Section 76-6-1102 or 76-10-1801.

(d) To obtain payment from the Identity Theft Victims Restricted Account, a person shall file a claim with the Fraudulent Documents Identification Unit by no later than one year after the day on which an individual is convicted, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or resolved by diversion or its equivalent an offense under Section 76-6-1102 or 76-10-1801 for the theft of the identity of the person filing the claim.

(e) A claim filed under this Subsection (5) shall include evidence satisfactory to the Fraudulent Documents Identification Unit:

(i) that the person is the victim of identity theft described in Subsection (5)(d); and

(ii) of the actual damages experienced by the person as a result of the identity theft that are not recovered from a public or private source.

(f) The Fraudulent Documents Identification Unit shall pay a claim from the Identity Theft Victims Restricted Account:

(i) if the Fraudulent Documents Identification Unit determines that the person has provided sufficient evidence to meet the requirements of Subsection (5)(e);

(ii) in the order that claims are filed with the Fraudulent Documents Identification Unit; and

(iii) to the extent that it there is money in the Identity Theft Victims Restricted Account.

(g) If there is insufficient money in the Identity Theft Victims Restrict Account when a claim is filed under this Subsection (5) to pay the claim in full, the Fraudulent Documents Identification Unit may pay a claim when there is sufficient money in the account to pay the claim in the order that the claims are filed.

[~~(5)~~] (6) The strike force shall make an annual report on its activities to the governor and the Legislature's Law Enforcement and Criminal Justice Interim Committee by December 1, together with any proposed recommendations for modifications to this section.

Section 32. Section 76-9-1001 is enacted to read:

Part 10. Illegal Immigration Enforcement Act

76-9-1001. Title.

This part is known as the "Illegal Immigration Enforcement Act."

Section 33. Section 76-9-1002 is enacted to read:

76-9-1002. Definitions.

As used in this part:

(1) "Alien" means a person who is not a citizen or national of the United States.

(2) "Law enforcement agency" means an entity of the federal government, a state, or a political subdivision of a state, including a state institution of higher education, that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

(4) "Lawfully present in the United States" is as defined in 8 C.F.R. Sec. 103.12, except that on or after the program start date, as defined in Section 63G-12-102, an individual who holds a valid permit, as defined in Section 63G-12-102, is considered lawfully present in the United States for purposes of this part.

(5) "Verify immigration status" or "verification of immigration status" means the determination of a person's immigration status by:

(a) a law enforcement officer who is authorized by a federal agency to determine an alien's immigration status; or

(b) the United States Department of Homeland Security, including Immigration and Customs Enforcement, or other federal agency authorized to provide immigration status as provided by 8 U.S.C. Sec. 1373(c).

Section 34. Section 76-9-1003 is enacted to read:

76-9-1003. Detention or arrest -- Determination of immigration status.

(1) (a) Except as otherwise provided in this Subsection (1), a law enforcement officer:

(i) shall request verification of the immigration status of an individual when the law enforcement officer acting in the enforcement of a state law or local ordinance:

(A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense that is a class A misdemeanor or a felony; and

(B) the individual is unable to provide to the law enforcement officer a document listed in Section 76-9-1004; and

(ii) may request verification of the immigration status of an individual when the law enforcement officer acting in the enforcement of a state law or local ordinance:

(A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense that is a class B misdemeanor or a class C misdemeanor; and

(B) the individual is unable to provide to the law enforcement officer a document listed in Section 76-9-1004.

(b) In an individual case, the law enforcement officer may forego a request for verification of immigration status under Subsection (1)(a) if the verification of immigration status could hinder or obstruct a criminal investigation.

(c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(d) Subsection (1)(a) does not apply to a law enforcement officer for a county, city, or town if the county, city, or town has only one law enforcement officer on duty and response support from another law enforcement agency is not available.

(2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the law enforcement officer makes observations that give the officer reasonable suspicion that the operator or a passenger in the vehicle is violating Section 76-5-309, 76-5-310, or 76-10-2901, the law enforcement officer shall, to the extent possible within a reasonable period of time:

(a) detain the one or more occupants of the vehicle to investigate the suspected violation; and

(b) request verification of immigration status of the one or more occupants of the vehicle.

(3) When an individual described in Subsection (1) is issued a citation or is arrested and booked into a jail, juvenile detention facility, or correctional facility, the citing law enforcement officer or the booking law enforcement officer shall ensure that a request for verification of immigration status of the cited or arrested individual is submitted as promptly as is reasonably possible.

(4) The law enforcement agency that has custody of an individual verified to be an alien who is not lawfully present in the United States shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.

(5) A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Section 35. Section 76-9-1004 is enacted to read:

76-9-1004. Documents to be provided a law enforcement officer -- Statement to law enforcement officer of citizenship.

A document specified in Subsection 76-9-1003(1) includes the following:

(1) a valid Utah driver license issued on or after January 1, 2010;

(2) a valid Utah identification card issued under Section 53-3-804 issued on or after January 1, 2010;

(3) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification;

(4) notwithstanding Section 53-3-207, a valid driving privilege card issued under Section 53-3-207;

(5) a valid permit issued under Section 63G-12-207;

(6) a valid permit to carry a concealed firearm issued under Section 53-5-704; or

(7) a valid identification document that:

(a) includes a photo or biometric identifier of the holder of the document; and

(b) is issued by a federal, state, or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document.

Section 36. Section 76-9-1005 is enacted to read:

76-9-1005. Implementation to be consistent with federal law and civil rights.

A state or local agency shall implement this part in a manner that is consistent with federal laws that regulate immigration, protect the civil rights of all persons, and establish the privileges and immunities of United States citizens.

Section 37. Section 76-10-2901 is amended to read:

76-10-2901. Transporting or harboring aliens -- Definition -- Penalty.

(1) [~~For purposes of~~] As used in this part[~~,~~]:

(a) Except as provided in Subsection (1)(b), "alien" means an individual who is illegally present in the United States.

(b) On or after the program start date, as defined in Section 63G-12-102, "alien" does not include an individual who holds a valid permit, as defined in Section 63G-12-102.

(2) It is unlawful for a person to:

(a) transport, move, or attempt to transport into this state or for a distance of greater than 100 miles within the state an alien for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

(b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or shelter from detection an alien in a place within this state, including a building or means of transportation for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law[~~.~~];

(c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in violation of law; or

(d) engage in a conspiracy, for commercial advantage or private financial gain, to commit any of the offenses listed in this Subsection (2).

(3) (a) A person who violates Subsection (2)(a), (c), or (d) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

(4) Nothing in this part prohibits or restricts the provision of:

(a) a state or local public benefit described in 8 U.S.C.[~~, Section~~] Sec. 1621(b); or

(b) charitable or humanitarian assistance, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a location where the assistance is provided, by a charitable, educational, or religious organization or its employees, agents, or volunteers, using private funds.

(5) (a) It is not a violation of this part for a religious denomination or organization or an agent, officer, or member of a religious denomination or organization to encourage, invite, call, allow, or enable an alien to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses.

(b) Subsection (5)(a) applies only to an alien who has been a member of the religious denomination or organization for at least one year.

Section 38. Section 77-7-2 is amended to read:

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) (a) for any public offense committed or attempted in the presence of any peace officer; and

(b) as used in this Subsection (1), "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when the peace officer has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when the peace officer has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person; [~~or~~]

(4) when the peace officer has reasonable cause to believe the person has committed the offense of failure to disclose identity under Section 76-8-301.5[~~.~~]; or

(5) when the peace officer has reasonable cause to believe that the person is an alien:

(a) subject to a civil removal order issued by an immigration judge;

(b) regarding whom a civil detainer warrant has been issued by the federal Department of Homeland Security; or

(c) who has been charged or convicted in another state with one or more aggravated felonies as defined by 8 U.S.C. Sec. 1101(a)(43).

Section 39. Coordinating H.B. 116 with H.B. 497 -- Substantive amendments.

If this H.B. 116 and H.B. 497, Utah Illegal Immigration Enforcement Act, both pass, it is the intent of the Legislature that Sections 76-9-1001 through 76-9-1005 enacted in H.B. 497 supersede Sections 76-9-1001 through 76-9-1005 in this bill.

CHAPTER 19
H. B. 466
Passed March 4, 2011
Approved March 15, 2011
Effective May 10, 2011

MIGRANT WORKERS AND RELATED COMMISSION AMENDMENTS

Chief Sponsor: Stephen E. Sandstrom
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to government in general to enact the Utah Commission on Immigration and Migration Act.

Highlighted Provisions:

This bill:

- enacts the Utah Commission on Immigration and Migration Act, including:
  - defining terms;
  - creating the commission;
  - outlining the general powers and duties of the commission;
  - addressing integration of immigrants in the state;
  - providing for the creation of the Migrant Worker Visa Pilot Program;
  - requiring monitoring of the pilot program and reporting on information gained; and
  - providing for implementation of similar migrant worker visa pilot programs.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
63G-12-101, Utah Code Annotated 1953
63G-12-102, Utah Code Annotated 1953
63G-12-201, Utah Code Annotated 1953
63G-12-202, Utah Code Annotated 1953
63G-12-203, Utah Code Annotated 1953
63G-12-301, Utah Code Annotated 1953
63G-12-302, Utah Code Annotated 1953
63G-12-303, Utah Code Annotated 1953
63G-12-304, Utah Code Annotated 1953

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

Section 1. Section 63G-12-101 is enacted to read:

CHAPTER 12. UTAH COMMISSION ON IMMIGRATION AND MIGRATION ACT

Part 1. General Provisions

63G-12-101. (Codified as 63G-13-101) Title.

This chapter is known as the "Utah Commission on Immigration and Migration Act."

Section 2. Section 63G-12-102 is enacted to read:

63G-12-102. (Codified as 63G-13-102) Definitions.

As used in this chapter:

(1) "Commission" means the Utah Commission on Immigration and Migration created in Section 63G-12-201.

(2) "Migrant worker" means an individual who leaves the individual's country of origin for employment of a seasonal or other temporary nature.

(3) "Pilot project" means the pilot project created under Part 3, Migrant Worker Visa Pilot Project, with the State of Nuevo Leon, Mexico.

(4) "Pilot project memorandum of understanding" means the memorandum of understanding described in Section 63G-12-301.

(5) (a) "State agency" means an executive, legislative, and judicial branch department, agency, board, commission, or division, or other administrative unit of the state.

(b) "State agency" includes a state institution of higher education as defined in Section 53B-3-102.

(6) "United States nonimmigrant visa" means a visa issued by the federal government as provided in 8 U.S.C. Sec. 1101 and 1184.

Section 3. Section 63G-12-201 is enacted to read:

Part 2. Utah Commission on Immigration and Migration

63G-12-201. (Codified as 63G-13-201) Creation of commission.

(1) There is created an advisory commission known as the "Utah Commission on Immigration and Migration." The commission is composed of 27 members as follows:

(a) the president of the Senate;

(b) the speaker of the House of Representatives;

(c) the minority leader of the Senate;

(d) the minority leader of the House of Representatives;

(e) the governor or, at the discretion of the governor, the lieutenant governor;

(f) the attorney general or the attorney general's designee;

(g) the commissioner of the Department of Agriculture and Food appointed under Section 4-2-3, or the commissioner's designee;

(h) the executive director of the Department of Commerce appointed under Section 13-1-3, or the executive director's designee;

(i) the executive director of the Department of Community and Culture, or the executive director's designee;

(j) the executive director of the Department of Workforce Services appointed under Section 35A-1-201, or the executive director's designee;

(k) the director of the Governor's Office of Economic Development appointed under Section 63M-1-202, or the director's designee;

(l) three members of the House of Representatives appointed by the speaker of the House of Representatives, not more than two of whom may be from the same political party;

(m) three members of the public appointed by the speaker of the House of Representatives in accordance with Subsection (2);

(n) three members of the Senate appointed by the president of the Senate, not more than two of whom may be from the same political party;

(o) three members of the public appointed by the president of the Senate in accordance with Subsection (2); and

(p) four members of the public appointed by the governor in accordance with Subsection (2), except that at least one of the four members appointed by the governor shall represent a migrant education program of the Utah State Board of Education, a school district, or charter school.

(2) (a) The president of the Senate, speaker of the House of Representatives, and the governor shall appoint a member of the public:

(i) who is a resident of the state; and

(ii) with due regard for:

(A) geographic representation;

(B) diversity;

(C) education, including academic post-graduate level degrees related to the immigrant community in Utah; and

(D) knowledge and experience.

(b) An appointment by the president of the Senate, the speaker of the House of Representatives, or the governor may include a representative from:

(i) an immigrant or immigrant-serving, community-based organization;

(ii) a philanthropic organization;

(iii) an advocacy group;

(iv) a business, including an immigrant entrepreneur;

(v) a union;

(vi) academia; or

(vii) a faith-based organization.

(c) The president of the Senate, the speaker of the House of Representatives, and the governor shall appoint a member of the public to a term of three years, except that of the members of the public first appointed:

(i) the following are appointed to a three-year term:

(A) one member appointed by the president of the Senate;

(B) one member appointed by the speaker of the House of Representatives; and

(C) one member appointed by the governor;

(ii) the following are appointed to a two-year term:

(A) one member appointed by the president of the Senate;

(B) one member appointed by the speaker of the House of Representatives; and

(C) one member appointed by the governor; and

(iii) the following are appointed to a one-year term:

(A) one member appointed by the president of the Senate;

(B) one member appointed by the speaker of the House of Representatives; and

(C) two members appointed by the governor.

(d) A member appointed from the public shall serve until a successor is appointed and qualified.

(3) A vacancy in the membership of the commission shall be filled for the unexpired term in the manner provided for the original appointment.

(4) (a) The governor or, at the discretion of the governor, the lieutenant governor shall chair the commission.

(b) A majority of the members of the commission constitute a quorum.

(c) A vote of the majority of the commission members present when a quorum is present is an action of the commission.

(5) The commission shall meet at the call of the chair, except that the chair shall call a meeting at least quarterly.

(6) A member of the commission may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The Office of the Attorney General shall staff the commission.

Section 4. Section 63G-12-202 is enacted to read:

63G-12-202. (Codified as 63G-13-202) General powers and duties of the commission.

(1) The commission shall:

(a) conduct a thorough review of the economic, legal, cultural, and educational impact of illegal immigration on the state and its political subdivisions;

(b) conduct a thorough examination of Utah and federal laws relating to immigration, migration, and guest worker programs;

(c) develop a comprehensive, coordinated, and sustainable state plan to address:

(i) immigration and the use of migrant workers in the state; and

(ii) integration of immigrants;

(d) make recommendations to the governor and the Legislature as to proposed legislation to implement the state plan described in Subsection (1)(c):

(i) consistent with the respective constitutional powers, rights, and responsibilities of the United States and of the state; and

(ii) to protect the health, safety, and welfare of the residents of the state;

(e) advise the governor and the Legislature on proposed legislation related to immigration:

(i) for the purpose of encouraging a comprehensive, coordinated, and sustainable state response to issues related to immigration; and

(ii) upon request of:

(A) the governor;

(B) the president of the Senate;

(C) the speaker of the House of Representatives;

(D) the minority leader of the Senate; or

(E) the minority leader of the House of Representatives; and

(f) comply with Part 3, Migrant Worker Visa Pilot Project.

(2) (a) The commission may request a state agency to provide the commission with information available to the state agency that the commission considers necessary to discharge the commission's duties under this section.

(b) A state agency shall cooperate with the commission to furnish the commission with the information requested under Subsection (2)(a):

(i) to the extent not inconsistent with law;

(ii) within the limits of the state agency's statutory authority; and

(iii) on as timely a basis as is necessary to accomplish the purposes of this chapter.

(3) (a) In performing its powers and duties, the commission may invite testimony from the governor, legislators, state agencies, and members of the public.

(b) The commission may consult with experts or other knowledgeable individuals in the public or private sector on any matter related to the commission's powers and duties under this section.

(c) The commission may hold one or more public hearings that it considers advisable and in locations within the state that it chooses to afford interested persons an opportunity to appear and present views with respect to any subject relating to the commission's powers and duties under this section.

(4) (a) The commission shall report periodically to the Legislature and governor on its activities and recommendations.

(b) The commission shall submit an initial report to the Legislature and governor no later than six months from the date of the first meeting of the commission.

(c) The commission shall submit a first annual report to the Legislature and governor six months from the day on which the initial report is submitted, or as soon as practicable after that date.

(d) After the first annual report, the commission shall annually submit reports to the Legislature and the governor.

(e) The commission shall provide any report submitted under this Subsection (4) to the public upon request.

Section 5. Section 63G-12-203 is enacted to read:

63G-12-203. (Codified as 63G-13-203) Collaboration on integration of immigrants.

(1) Consistent with the state plan described in Subsection 63G-12-202(1)(c), the commission shall:

(a) work collaboratively with federal, state, and local governments to facilitate integration of immigrants in the state; and

(b) work collaboratively with businesses and community organizations to ensure that public input into the process is consistently maintained with regard to integration of immigrants.

(2) The commission shall evaluate the structure and organization of government in Utah including state agencies, independent entities, political subdivisions, and school districts, and advise the Legislature and governor on how best to achieve immigrant integration in the delivery of services and programs in a cost neutral manner.

(3) In its examination of immigrant integration in the state, the commission shall identify any measures that will bring enhanced lawfulness, economy, efficiency, and accountability to government operations.

Section 6. Section 63G-12-301 is enacted to read:

Part 3. Migrant Worker Visa Pilot Project

63G-12-301. (Codified as 63G-13-301) Migrant Worker Visa Pilot Project.

(1) With the assistance of the attorney general, and subject to Section 63G-12-302, the governor may negotiate and enter into a memorandum of understanding with the government of the State of Nuevo Leon, Mexico, through its Migrant Attention Center to create a pilot project known as the "Migrant Worker Visa Pilot Project" under which Utah businesses may obtain legal foreign migrant workers through use of United States nonimmigrant visas.

(2) The commission shall recommend to the Legislature and the governor policies and programs that will educate, encourage, support, and facilitate Utah businesses in need of nonimmigrant temporary workers to participate in the pilot project.

Section 7. Section 63G-12-302 is enacted to read:

63G-12-302. (Codified as 63G-13-302) Requirements for pilot project and pilot project memorandum of understanding.

(1) Under the pilot project memorandum of understanding, the governor may commit the state, including the commission, to work directly with officials of the government of the State of Nuevo Leon, Mexico, including the Migrant Attention Center, to encourage, facilitate, and support the migration of legal Mexican migrant workers from the State of Nuevo Leon to Utah for the purpose of filling jobs with Utah businesses most in need of skilled and unskilled migrant labor.

(2) The pilot project and the pilot project memorandum of understanding shall:

(a) be compatible with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq., and federal policies, procedures, and requirements for issuing United States nonimmigrant visas to Mexicans qualified to participate in the pilot project, with particular attention to the following:

(i) a Utah business hiring an alien through the pilot project shall demonstrate and certify that there are not sufficient workers where that labor is to be performed who are able, willing, qualified, and available at the time of application for a United States nonimmigrant visa; and

(ii) the employment of the alien will not adversely affect the wages and working conditions of workers in Utah who are similarly employed;

(b) require that the State of Nuevo Leon will provide Mexican migrant workers to Utah businesses who meet certain requirements, including that each migrant worker:

(i) meets the legal requirements of federal law with regard to eligibility for a United States nonimmigrant visa;

(ii) passes a criminal background check;

(iii) undergoes standardized testing to satisfy the hiring Utah business that the migrant worker possesses the requisite level of education or skill required for the job to be filled;

(iv) is issued a tamper-proof identification that includes personal information, photo, fingerprint, visa number, and an expiration date; and

(v) will be notified by the Migrants Attention Center of the State of Nuevo Leon before the expiration date of the United States nonimmigrant visa of the date the migrant worker is required to return to Mexico; and

(c) if a migrant worker fails to return to Mexico before expiration of the migrant worker's United States nonimmigrant visa, require the Migrants Attention Center of the State of Nuevo Leon to notify:

(i) the Utah business that hires the migrant worker;

(ii) the advisory group created in accordance with Section 63G-12-303; and

(iii) United States Immigration and Custom Enforcement.

Section 8. Section 63G-12-303 is enacted to read:

63G-12-303. (Codified as 63G-13-303) Commission advisory group to conduct study -- Commission to prepare recommendations.

(1) (a) The commission shall create an advisory group to perform the studies required by this section.

(b) The commission shall appoint at least one member of the commission to the advisory group.

(c) The advisory group may work jointly with a similar group of the State of Nuevo Leon, Mexico.

(d) A member of the advisory group may not receive per diem and travel expenses.

(2) The advisory group shall:

(a) study the process and results of the pilot project;

(b) study the impact of existing federal law on the ability to meet the needs of Utah businesses and Mexican migrant workers;

(c) study the current United States nonimmigrant visa application process from both the employer and employee perspective to understand:

(i) the strengths and weaknesses of the existing law; and

(ii) the United States nonimmigrant visa process and the implications to regional employment and security;

(d) document the state and regional economic impact and security implications of existing law and processes;

(e) educate both Utah and the State of Nuevo Leon populations on issues to create alignment around a shared vision; and

(f) report its findings annually to the commission in a detailed report that includes recommendations

to the commission on how to best address the challenges of immigration, employment, and security.

(3) (a) The commission shall use the information generated by the advisory group pursuant to the pilot project to make recommendations to the governor by no later than one year after the day on which the pilot project memorandum of understanding is executed.

(b) The commission shall consider including in the recommendations:

(i) observations and market recommendations;

(ii) one or more proposals to amend existing law as necessary to accomplish the recommendations made by the commission and to meet the realities of current economic necessities;

(iii) a recommendation as to whether, and if so, to what extent, the current caps on the H-2B United States nonimmigrant visas should be raised; and

(iv) a recommendation as to whether the wait time between receiving H-2 United States nonimmigrant visas should be shortened.

(c) The governor may report the recommendations of the commission to the President of the United States, Congress, and the United States Attorney General.

Section 9. Section 63G-12-304 is enacted to read:

63G-12-304. (Codified as 63G-13-304) Expansion to similar pilot projects.

(1) If one year after the pilot project memorandum of understanding is executed under Section 63G-12-301 the governor determines, after consultation with the commission, that the pilot project is successful, the governor may enter into one or more additional memorandum of understanding to create pilot projects similar to the pilot project with the State of Nuevo Leon, except that the governor may not enter into a similar pilot project memorandum of understanding with a country:

(a) designated by the United States State Department as a state sponsor of terrorism in accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act;

(b) against which the United States has declared war; or

(c) against which the United States has imposed sanctions as listed under a sanctions program of the Office of Foreign Assets Control within the United States Department of Treasury.

(2) After the governor has entered into one or more additional memorandum of understanding under Subsection (1), the governor, in consultation with the commission, may periodically evaluate whether to enter into additional pilot projects subject to the limitations of Subsections (1)(a) through (c).

(3) (a) A memorandum of understanding creating a similar pilot project shall comply with the requirements of Section 63G-12-302.

(b) A similar pilot project created under this section shall operate in a manner substantially similar to the pilot project with the State of Nuevo Leon implemented under this part.

CHAPTER 20
H. B. 469
Passed March 8, 2011
Approved March 15, 2011
Effective May 10, 2011

IMMIGRATION RELATED AMENDMENTS

Chief Sponsor: John Dougall
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies general government provisions to enact the Utah Pilot Sponsored Resident Immigrant Program Act.

Highlighted Provisions:

This bill:

- exempts permits under the program from certain requirements for identification; and
- enacts the Utah Pilot Sponsored Resident Immigrant Program Act, including:
  - defining terms;
  - providing for the creation of the program by the governor;
  - granting rulemaking authority;
  - outlining how a foreign national can participate in the program;
  - establishing grounds for ineligibility;
  - addressing sponsorship;
  - providing for the issuance of a permit;
  - addressing employment and taxation obligations;
  - placing restrictions on travel and permitting other requirements to be imposed on a resident immigrant;
  - addressing disqualification from the program; and
  - addressing penalties on sponsors.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 497, Utah Illegal Immigration Enforcement Act, to make substantive amendments.

Utah Code Sections Affected:

AMENDS:
63G-11-102, as last amended by Laws of Utah 2010, Chapter 281

ENACTS:
63G-12-101, Utah Code Annotated 1953
63G-12-102, Utah Code Annotated 1953
63G-12-201, Utah Code Annotated 1953
63G-12-202, Utah Code Annotated 1953
63G-12-203, Utah Code Annotated 1953
63G-12-204, Utah Code Annotated 1953
63G-12-205, Utah Code Annotated 1953
63G-12-206, Utah Code Annotated 1953
63G-12-301, Utah Code Annotated 1953
63G-12-302, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:
76-9-1004, Utah Code Annotated 1953
76-10-2901, as enacted by Laws of Utah 2008, Chapter 26

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

Section 1. Section 63G-11-102 is amended to read:

63G-11-102. Creation of identity documents -- Issuance to citizens, nationals, and legal permanent resident aliens -- Exceptions.

(1) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and possess an engraved plate or other device for the printing of an identification document:

(a) a federal, state, or local government agency for employee identification, which is designed to identify the bearer as an employee;

(b) a federal, state, or local government agency for purposes authorized or required by law or a legitimate purpose consistent with the duties of the agency, including such documents as voter identification cards, identification cards, passports, birth certificates, and Social Security cards; and

(c) a public school or state or private educational institution to identify the bearer as an administrator, faculty member, student, or employee.

(2) The name of the issuing entity shall be clearly printed upon the face of the identification document.

(3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue the document, card, or certificate only to:

(a) a United States citizen;

(b) a national; or

(c) a legal permanent resident alien.

(4) (a) Subsection (3) does not apply to an applicant for an identification document who presents, in person, valid documentary evidence of the applicant's:

(i) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) pending or approved application for asylum in the United States;

(iii) admission into the United States as a refugee;

(iv) pending or approved application for temporary protected status in the United States;

(v) approved deferred action status; or

(vi) pending application for adjustment of status to legal permanent resident or conditional resident.

(b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c) identification

document to an applicant who satisfies the requirements of Subsection (4)(a).

(ii) Except as otherwise provided by federal law, the document is valid only:

(A) during the period of time of the individual's authorized stay in the United States; or

(B) for one year from the date of issuance if there is no definite end to the individual's period of authorized stay.

(iii) An entity issuing an identification document under this Subsection (4) shall clearly indicate on the document:

(A) that it is temporary; and

(B) its expiration date.

(c) An individual may renew a document issued under this Subsection (4) only upon presentation of valid documentary evidence that the status by which the individual originally qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) (a) Subsection (3) does not apply to an identification document issued under Subsection (1)(c) that:

(i) is only valid for use on the educational institution's campus or facility; and

(ii) includes a statement of the restricted use conspicuously printed upon the face of the identification document.

(b) Subsection (3) does not apply to a license certificate, driving privilege card, or identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.

(c) Subsection (3) does not apply to a public transit pass issued by a public transit district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:

(i) is only valid for use on the public transit system; and

(ii) includes a statement of the restricted use conspicuously printed on the face of the public transit pass.

(d) Subsection (3) does not apply to a permit issued under Chapter 12, Utah Pilot Sponsored Resident Immigrant Program Act.

(6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Section 2. Section 63G-12-101 is enacted to read:

CHAPTER 12. UTAH PILOT SPONSORED RESIDENT IMMIGRANT PROGRAM ACT

Part 1. General Provisions

63G-12-101. (Codified as 63G-14-101) Title.

This chapter is known as the "Utah Pilot Sponsored Resident Immigrant Program Act."

Section 3. Section 63G-12-102 is enacted to read:

63G-12-102. (Codified as 63G-14-102) Definitions.

(1) "Department" means the Department of Public Safety created in Section 53-1-103.

(2) (a) "Foreign national," except as provided in Subsection (2)(b), means an individual who is a citizen of a foreign country.

(b) "Foreign national" does not include an individual who is in the United States, but who is not lawfully present in any of the states of the United States.

(3) "Permit" means an identification permit issued in accordance with Section 63G-12-204.

(4) "Program" means the Utah Pilot Sponsored Resident Immigrant Program created in Section 63G-12-201.

(5) "Resident immigrant" means an individual who:

(a) is a foreign national; and

(b) is accepted into the program in accordance with Section 63G-12-202.

(6) "Sponsor" means an individual who agrees to sponsor a foreign national under the program in accordance with Section 63G-12-203.

Section 4. Section 63G-12-201 is enacted to read:

Part 2. Utah Pilot Sponsored Resident Immigrant Program

63G-12-201. (Codified as 63G-14-201) Creation of program.

(1) (a) The governor shall create a program known as the "Utah Pilot Sponsored Resident Immigrant Program":

(i) that is consistent with this chapter; and

(ii) under which a resident immigrant may reside, work, and study in Utah, except that the program may not permit a resident immigrant to travel outside of the state except as provided in Subsection 63G-12-206(1).

(b) The governor shall:

(i) begin implementation of the program by no later than July 1, 2013; and

(ii) end operation of the program on June 30, 2018.

(c) Under the program, the governor may facilitate transport to Utah for a foreign national who has been accepted into the program.

(d) The governor may recommend legislation to the Legislature to address how a resident immigrant is to be treated under statutes that relate to an alien.

(2) The department shall administer the program, except to the extent that the governor

delegates a power or duty under the program to another state agency. Subject to Subsection (3), the department may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to implement the program to the extent expressly provided for in this chapter.

(3) The governor may act by executive order whenever the department is authorized to make rules under this chapter. If there is a conflict between a rule made by the department and an executive order of the governor, the executive order governs.

Section 5. Section 63G-12-202 is enacted to read:

63G-12-202. (Codified as 63G-14-202) Approval as a resident immigrant -- Ineligibility.

(1) To be considered for approval as a resident immigrant for purposes of the program, a foreign national shall:

(a) file an application with the department;

(b) at the time of filing the application be living outside of the United States;

(c) pass a health and background screening;

(d) provide evidence that the foreign national has not been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a felony or class A misdemeanor;

(e) file proof of sponsorship by a sponsor who meets the requirements of Section 63G-12-203; and

(f) pay a fee established by the department in accordance with Section 63J-1-504.

(2) A foreign national is ineligible for the program if the individual:

(a) is in the United States at the time of application for the program; or

(b) is a citizen of a country:

(i) designated by the United States State Department as a state sponsor of terrorism in accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act;

(ii) against which the United States has declared war; or

(iii) against which the United States has imposed sanctions as listed under a sanctions program of the Office of Foreign Assets Control within the United States Department of Treasury.

(3) A foreign national may appeal the denial of participation in the program as a resident immigrant in accordance with Chapter 4, Administrative Procedures Act.

(4) (a) The department, in consultation with the governor, shall make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, that provide:

(i) what constitutes passing a health screening to be eligible to be accepted into the program, except at a minimum to be eligible to participate in the program an individual may not have a medical condition that would make the individual inadmissible for public health grounds under 8 U.S.C. Sec. 1182;

(ii) what constitutes a background screening to be eligible to be accepted into the program;

(iii) what constitutes proof of sponsorship to be provided by the foreign national;

(iv) the term for which a foreign national is considered a resident immigrant; and

(v) the process of obtaining a resident immigrant permit under Section 63G-12-204.

(b) When making a rule under this section, the department shall use federal standards as a guideline to avoid unnecessary duplication and additional costs.

Section 6. Section 63G-12-203 is enacted to read:

63G-12-203. (Codified as 63G-14-203) Sponsorship.

(1) (a) An individual who is a United States citizen and a resident of Utah may sponsor a foreign national as a resident immigrant by agreeing to assume financial responsibility for the foreign national in accordance with this section.

(b) An individual described in Subsection (1)(a) may sponsor:

(i) two individual foreign nationals; or

(ii) each individual in an association of individuals:

(A) who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses;

(B) who are relatives of each other; and

(C) at least one of whom is a parent.

(2) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall establish eligibility requirements to be a sponsor, except that at a minimum the eligibility requirements shall require that the sponsor:

(a) prove an income level at or above 125% of the federal poverty level; or

(b) meet an alternative test created by the department that considers assets as well as income.

(3) (a) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall define what constitutes an assumption of financial responsibility for a resident immigrant, except that at a minimum the rules shall require that the sponsor agrees:

(i) to accept responsibility for any financial liability a foreign national incurs while participating in the program;

(ii) to an assumption of financial responsibility for the foreign national that is equivalent to the financial responsibility that a parent has for a dependent child; and

(iii) that the state may consider the sponsor's income and assets to be available for the support of the resident immigrant sponsored by the sponsor.

(b) A sponsor violates this chapter if the sponsor fails to pay a financial liability of a resident immigrant that is not paid by the resident immigrant and that is subject to the sponsor's assumption of financial responsibility for the resident immigrant.

(4) (a) To terminate the sponsorship of a resident alien, an individual shall:

(i) notify the department; and

(ii) provide evidence satisfactory to the department that the resident alien no longer resides in the United States.

(b) A sponsorship is terminated the day on which the department certifies that the sponsor has complied with Subsection (4)(a).

(5) A sponsor shall prove to the satisfaction of the department that a resident immigrant leaves the United States if:

(a) the resident alien is disqualified from the program; or

(b) the sponsor terminates sponsorship.

Section 7. Section 63G-12-204 is enacted to read:

63G-12-204. (Codified as 63G-14-204) Resident immigrant permit.

(1) The department shall:

(a) create a resident immigrant permit to be issued to an individual who is a resident immigrant that:

(i) is of impervious material that is resistant to wear or damage; and

(ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and

(b) ensure that a permit:

(i) includes a photograph of the individual to whom the permit is issued;

(ii) prominently states the day on which the permit expires;

(iii) prominently states the type of permit; and

(iv) includes a unique identifier.

(2) The department shall establish the fee under Section 63G-12-202 to be adequate to pay the costs incurred to issue a permit.

Section 8. Section 63G-12-205 is enacted to read:

63G-12-205. (Codified as 63G-14-205) Employment and taxation obligations under the program.

(1) A person in the state may employ a resident immigrant.

(2) A resident immigrant, or a resident immigrant's employer, shall pay all income taxes and employment taxes, fees, or charges in accordance with the program.

(3) (a) The State Tax Commission shall, by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a means that is effective as of the day on which the governor begins implementation of the program under which a person who receives services from a resident immigrant to withhold from compensation paid to the resident immigrant an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income taxes that would be withheld under state law if the resident immigrant were an employee with a Social Security number.

(b) The rules described in Subsection (3)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.

(c) As part of the program the governor shall provide a method by which there is collected and remitted to the federal government the money collected that is equivalent to the income and employment taxes that would be withheld under federal law if a resident immigrant were an employee with a Social Security number.

Section 9. Section 63G-12-206 is enacted to read:

63G-12-206. (Codified as 63G-14-206) Restrictions on activities of resident immigrant.

(1) (a) A resident immigrant may not travel outside of the state without the express written approval of the department.

(b) The department shall by rule, made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a process by which a person obtains approval to travel as required by Subsection (1)(a).

(2) The department may by rule, made in accordance with Chapter 3, Utah Administrative Rulemaking Act, impose other requirements to maintain the status of a resident immigrant that are consistent with this chapter.

Section 10. Section 63G-12-301 is enacted to read:

Part 3. Enforcement

63G-12-301. (Codified as 63G-14-301) Disqualification from program.

(1) A resident immigrant is disqualified from the program if after becoming a resident immigrant the individual:

(a) is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or is resolved by diversion or its equivalent to a felony or class A misdemeanor; or

(b) violates the terms and restrictions of the program.

(2) In accordance with Chapter 4, Administrative Procedures Act, the department may bring an action to terminate a resident immigrant's participation in the program for a violation described in Subsection (1).

Section 11. Section 63G-12-302 is enacted to read:

63G-12-302. (Codified as 63G-14-302) Penalties on sponsors.

In accordance with Chapter 4, Administrative Procedures Act, the department may:

(1) impose a fine on a sponsor who violates Subsection 63G-12-203(5) not to exceed $5,000; and

(2) prohibit a sponsor from sponsoring another resident alien for a period of five years for a violation described in Subsection 63G-12-203(3)(b).

Section 12. Coordinates H.B. 469 with H.B. 497 -- Substantive amendments.

If this H.B. 469 and H.B. 497, Utah Illegal Immigration Enforcement Act, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel make the following changes:

(1) delete the "or" at the end of Subsection 76-9-1004(1)(c) enacted in H.B. 497;

(2) delete the "." and insert "; or" at the end of Subsection 76-9-1004(1)(d) enacted in H.B. 497;

(3) insert a new Subsection (1)(e) in Section 76-9-1004 enacted in H.B. 497 that reads:

"(e) a valid resident immigrant permit issued under Section 63G-12-204."; and

(4) insert a new Subsection (6) in Section 76-10-2901 amended in H.B. 497 that reads:

"(6) An individual's participation in Title 63G, Chapter 12, Utah Pilot Sponsored Resident Immigrant Program Act, either as a sponsor or resident alien does not constitute encouraging or inducing an alien to come to, enter, or reside in this state in violation of Subsection (2)(c)."

CHAPTER 21
H. B. 497
Passed March 4, 2011
Approved March 15, 2011
Effective May 10, 2011

UTAH ILLEGAL IMMIGRATION ENFORCEMENT ACT

Chief Sponsor: Stephen E. Sandstrom
Senate Sponsor: Margaret Dayton
Cosponsors: Roger E. Barrus
Derek E. Brown
Melvin R. Brown
David G. Butterfield
David Clark
Brad L. Dee
Susan Duckworth
Julie Fisher
Gage Froerer
Brad J. Galvez
Francis D. Gibson
Richard A. Greenwood
Keith Grover
Stephen G. Handy
Neal B. Hendrickson
Christopher N. Herrod
Gregory H. Hughes
Don L. Ipson
Bradley G. Last
John G. Mathis
Michael T. Morley
Merlynn T. Newbold
Jim Nielson
Michael E. Noel
Curtis Oda
Patrick Painter
Lee B. Perry
Val L. Peterson
Dixon M. Pitcher
Kraig Powell
Paul Ray
Holly J. Richardson
Douglas Sagers
Kenneth W. Sumsion
Evan J. Vickers
Ryan D. Wilcox
Brad R. Wilson
Carl Wimmer

LONG TITLE

General Description:

This bill modifies state law and enacts "The Illegal Immigration Enforcement Act."

Highlighted Provisions:

This bill:

- requires that an officer verify the immigration status of a person arrested for a felony or a class A misdemeanor and a person booked for class B or C misdemeanors and requires that an officer attempt to verify immigration status for a person detained for a class B or C misdemeanor;
- provides enforcement exceptions regarding an officer's verifying immigration status;
- clarifies when passengers in a vehicle where the operator has been detained may also be questioned and their immigration status verified;
- requires that a law enforcement officer may not consider race, color, or national origin, except as permitted by Utah and United States constitutions;
- states grounds for a presumption of a person's lawful presence in the United States;
- provides for transportation of an illegal alien to federal custody by a state or local law enforcement officer;
- provides that a state or local agency may not limit by ordinance, regulation, or policy the authority of any law enforcement or other governmental agency to assist the federal government in the enforcement of any federal immigration law, including the federal requirement to register as an alien or possess an alien registration document;
- provides that any state or local governmental agency is not restricted in sending, receiving, or maintaining immigration status information of any person in carrying out the agency's lawful purposes;
- requires verification of immigration status regarding application for public services or benefits provided by a state or local governmental agency or subcontractor, except as exempted by federal law;
- provides that this bill does not implement or authorize the federal REAL ID Act to any extent not currently provided by state law;
- amends the current state law prohibiting transporting or harboring illegal aliens by removing the limitation to transportation of the alien for a distance greater than 100 miles;
- prohibits the encouraging or inducing of an illegal alien to come to or reside in Utah; and
- amends peace officer arrest authority to include making an arrest when the officer has reasonable cause to believe the person is an alien:
  - subject to an immigration removal order; and
  - regarding whom a detainer warrant has been issued who has committed or been charged with a felony in another state.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 288, Utah Immigration Enforcement Amendments, by providing substantive amendments.

Utah Code Sections Affected:

AMENDS:

76-10-2901, as enacted by Laws of Utah 2008, Chapter 26
77-7-2, as last amended by Laws of Utah 2008, Chapter 293

ENACTS:

76-9-1001, Utah Code Annotated 1953
76-9-1002, Utah Code Annotated 1953
76-9-1003, Utah Code Annotated 1953
76-9-1004, Utah Code Annotated 1953
76-9-1005, Utah Code Annotated 1953
76-9-1006, Utah Code Annotated 1953
76-9-1007, Utah Code Annotated 1953
76-9-1008, Utah Code Annotated 1953

76-9-1009, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

76-9-1001, Utah Code Annotated 1953
76-9-1002, Utah Code Annotated 1953
76-9-1003, Utah Code Annotated 1953
76-9-1004, Utah Code Annotated 1953
76-9-1005, Utah Code Annotated 1953
76-10-2901, as enacted by Laws of Utah 2008, Chapter 26
77-7-2, as last amended by Laws of Utah 2008, Chapter 293

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

Section 1. Section 76-9-1001 is enacted to read:

Part 10. The Illegal Immigration Enforcement Act

76-9-1001. Title.

This part is known as "The Illegal Immigration Enforcement Act."

Section 2. Section 76-9-1002 is enacted to read:

76-9-1002. Definitions.

As used in this part:

(1) "Alien" means a person who is not a citizen or national of the United States.

(2) "ICE" means the federal Immigration and Customs Enforcement agency of the United States Department of Homeland Security.

(3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

(4) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the federal Department of Homeland Security.

(5) "State or local governmental agency" includes any private contractor or vendor that contracts with the agency to provide the agency's functions or services.

(6) "Verify immigration status" or "verification of immigration status" means the determination of a person's immigration status by:

(a) a law enforcement officer who is authorized by a federal agency to determine an alien's immigration status; or

(b) the United States Department of Homeland Security, ICE, or other federal agency authorized to provide immigration status as provided by 8 U.S.C. Sec. 1373(c).

Section 3. Section 76-9-1003 is enacted to read:

76-9-1003. Detention or arrest -- Determination of immigration status.

(1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop, detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1) and the officer is otherwise unable to verify the identity of the person, the officer:

(i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

(ii) may attempt to verify the immigration status of the person, except as exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except that if the person is arrested and booked for a class B or C misdemeanor, the arresting law enforcement officer or the law enforcement agency booking the person shall attempt to verify the immigration status of the person.

(b) In individual cases, the law enforcement officer may forego the verification of immigration status under Subsection (1)(a) if the determination could hinder or obstruct a criminal investigation.

(c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(d) Subsection (1)(a) does not apply to a county or municipality when it has only one law enforcement officer on duty and response support from another law enforcement agency is not available.

(2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the officer makes observations that give the officer reasonable suspicion that the operator or any of the passengers in the vehicle are violating Section 76-5-309, 76-5-310, or 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the extent possible within a reasonable period of time:

(a) detain the occupants of the vehicle to investigate the suspected violations; and

(b) inquire regarding the immigration status of the occupants of the vehicle.

(3) When a person under Subsection (1) is arrested or booked into a jail, juvenile detention facility, or correctional facility, the arresting officer or the booking officer shall ensure that a request for verification of immigration status of the arrested or booked person is submitted as promptly as is reasonably possible.

(4) The law enforcement agency that has custody of a person verified to be an illegal alien shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.

(5) A law enforcement officer may not consider race, color, or national origin in implementing this

section, except to the extent permitted by the constitutions of the United States and this state.

Section 4. Section 76-9-1004 is enacted to read:

76-9-1004. Grounds for presumption of lawful presence in United States -- Statement to officer.

(1) A person is presumed to be lawfully present in the United States for the purposes of this part if the person provides one of the following documents to the law enforcement officer, unless the law enforcement officer has a reasonable suspicion that the document is false or identifies a person other than the person providing the document:

(a) a valid Utah driver license issued on or after January 1, 2010;

(b) a valid Utah identification card issued under Section 53-3-804 and issued on or after January 1, 2010;

(c) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification; or

(d) a valid identification document that:

(i) includes a photo or biometric identifier of the holder of the document; and

(ii) is issued by a federal, state, or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document.

(2) A person is presumed to be a citizen or national of the United States for purposes of this part if the person makes a statement or affirmation to the law enforcement officer that the person is a United States citizen or national, unless the officer has a reasonable suspicion that the statement or affirmation is false.

Section 5. Section 76-9-1005 is enacted to read:

76-9-1005. Illegal alien -- Notification of federal government -- Transportation to federal facility.

A state or local law enforcement agency may securely transport an alien who is in the agency's custody and whom the agency has verified is unlawfully present in the United States to a federal detention facility in this state or, with the concurrence of the receiving federal agency, to a federal facility or other point of transfer to federal custody that is outside this state.

Section 6. Section 76-9-1006 is enacted to read:

76-9-1006. Enforcement of federal immigration laws.

A state or local governmental agency of this state, or any representative of the agency, may not:

(1) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency or other governmental agency to assist the federal government in the enforcement of any federal law or regulation governing immigration; or

(2) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses of willful failure to register as an alien or willful failure to personally possess an alien registration document as required by 8 U.S.C. Sec. 1304(e) or 1306(a).

Section 7. Section 76-9-1007 is enacted to read:

76-9-1007. Determining an alien's immigration status -- Transfer or maintenance of information.

(1) Except as limited by federal law, any state or local governmental agency is not restricted or prohibited in any way from sending, receiving, or maintaining information related to the lawful or unlawful immigration status of any person by communicating with any federal, state, or local governmental entity for any lawful purpose, including:

(a) determining a person's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by any political subdivision of this state;

(b) confirming a person's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(c) if the person is an alien, determining if the person is in compliance with the federal registration laws of Title II, Part 7, Immigration and Nationality Act; or

(d) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. Sec. 1373.

(2) This section does not implement, authorize, or establish the federal REAL ID Act of 2005, P.L. 109-13, Division B; 119 Stat. 302, except as provided by Section 53-3-104.5, regarding limitations on the state implementation of the federal REAL ID Act.

Section 8. Section 76-9-1008 is enacted to read:

76-9-1008. Proof of immigration status to receive public benefits.

(1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec. 1621 shall comply with Section 63G-11-104 and shall also comply with this section, except:

(i) as provided in Subsection 63G-11-104(4)(g) or (k); or

(ii) when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.

(b) The agency shall verify a person's lawful presence in the United States by requiring that the applicant under this section sign a certificate under penalty of perjury, stating that the applicant:

(i) is a United States citizen; or

(ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.

(c) The certificate under Subsection (1)(b) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(d) The signature under this Subsection (1) may be executed in person or electronically.

(e) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.

(3) If the certificate constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.

(4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations to the requirements of the provisions of this section that provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(5) If an agency under Subsection (1) receives verification that a person making an application for any benefit, service, or license is not a qualified alien, the agency shall provide the information to the local law enforcement agency for enforcement of Section 76-8-1205 unless prohibited by federal mandate.

Section 9. Section 76-9-1009 is enacted to read:

76-9-1009. Implementation to be consistent with federal law and civil rights.

All state and local agencies shall implement this part in a manner that is consistent with federal laws that regulate immigration, protect the civil rights of all persons, and establish the privileges and immunities of United States citizens.

Section 10. Section 76-10-2901 is amended to read:

76-10-2901. Transporting or harboring aliens -- Definition -- Penalties.

(1) [~~For purposes of~~] As used in this part, "alien" means an individual who is illegally present in the United States.

(2) It is unlawful for a person to:

(a) transport, move, or attempt to transport into this state [~~or for a distance of greater than 100 miles~~] or within the state an alien for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

(b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or shelter from detection an alien in a place within this state, including a building or means of transportation for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law[~~.~~];

(c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in violation of law; or

(d) engage in any conspiracy, for commercial advantage or private financial gain, to commit any of the offenses listed in this Subsection (2).

(3) (a) A person who violates Subsection (2)(a), (c), or (d) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

(4) Nothing in this part prohibits or restricts the provision of:

(a) a state or local public benefit described in 8 U.S.C.[~~, Section~~] Sec. 1621(b); or

(b) charitable or humanitarian assistance, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a location where the assistance is provided, by a charitable, educational, or religious organization or its employees, agents, or volunteers, using private funds.

(5) (a) It is not a violation of this part for a religious denomination or organization or an agent, officer, or member of a religious denomination or organization to encourage, invite, call, allow, or enable an alien to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses.

(b) Subsection (5)(a) applies only to an alien who has been a member of the religious denomination or organization for at least one year.

Section 11. Section 77-7-2 is amended to read:

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) (a) for any public offense committed or attempted in the presence of any peace officer; and

(b) as used in this Subsection (1), "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when the peace officer has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when the peace officer has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person; [~~or~~]

(4) when the peace officer has reasonable cause to believe the person has committed the offense of failure to disclose identity under Section 76-8-301.5[~~.~~]; or

(5) when the peace officer has reasonable cause to believe that the person is an alien:

(a) subject to a civil removal order issued by an immigration judge;

(b) regarding whom a civil detainer warrant has been issued by the federal Department of Homeland Security; or

(c) who has been charged or convicted in another state with one or more aggravated felonies as defined by 8 U.S.C. Sec. 1101(a)(43).

Section 12. Coordinating H.B. 497 with S.B. 288 -- Substantive amendments.

If this H.B. 497 and S.B. 288, Utah Immigration Enforcement Amendments, both pass, it is the intent of the Legislature that:

(1) Sections 76-9-1001 through 76-9-1005 in this H.B. 497 supersede Sections 76-9-1001 through 76-9-1005 in S.B. 288;

(2) Subsection 76-10-2901(3)(a) in H.B. 497 supersedes Subsection 76-10-2901(3)(a) in S.B. 288; and

(3) Subsection 77-7-2(5)(d) in S.B. 288 supersedes Subsection 77-7-2(5)(d) in H.B. 497.

CHAPTER 22
H. B. 10
Passed February 18, 2011
Approved March 16, 2011
Effective May 10, 2011

RENEWAL OF JUDGMENT ACT

Chief Sponsor: Gage Froerer
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill establishes a process and fee for renewal of judgments.

Highlighted Provisions:

This bill:

- establishes a process and fee for renewal of judgments;
- establishes the renewal period for eight years; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-2-301, as last amended by Laws of Utah 2010, Chapters 278 and 283
78B-6-209, as last amended by Laws of Utah 2010, Chapter 278

ENACTS:

78B-6-1801, Utah Code Annotated 1953
78B-6-1802, Utah Code Annotated 1953
78B-6-1803, Utah Code Annotated 1953
78B-6-1804, Utah Code Annotated 1953

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

Section 1. Section 78A-2-301 is amended to read:

78A-2-301. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $360.

(b) The fee for filing a complaint or petition is:

(i) $75 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $360 if the claim for damages or amount in interpleader is $10,000 or more;

(iv) $310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance; and

(v) $35 for a motion for temporary separation order filed under Section 30-3-4.5.

(c) The fee for filing a small claims affidavit is:

(i) $60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $7,500 or more.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) $55 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $155 if the original petition is filed under Subsection (1)(a), the claim for relief is $10,000 or more, or the party seeks relief other than monetary damages; and

(iv) $115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) $50 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $120 if the claim for relief exclusive of court costs, interest, and attorney fees is $7,500 or more.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) $225 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) $65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $225.

(i) The fee for filing a petition for expungement is $135.

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to

and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.

(iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)[~~(r)~~](s) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.

(iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $35.

(l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is 50% of the fee for filing an original action seeking the same relief.

[~~(l)~~] (m) The fee for filing probate or child custody documents from another state is $35.

[~~(m)~~] (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is $30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is $50.

[~~(n)~~] (o) The fee for filing a judgment by confession without action under Section 78B-5-205 is $35.

[~~(o)~~] (p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is $35.

[~~(p)~~] (q) The fee for filing a petition or counter-petition to modify a decree of divorce is $100.

[~~(q)~~] (r) The fee for filing any accounting required by law is:

(i) $15 for an estate valued at $50,000 or less;

(ii) $30 for an estate valued at $75,000 or less but more than $50,000;

(iii) $50 for an estate valued at $112,000 or less but more than $75,000;

(iv) $90 for an estate valued at $168,000 or less but more than $112,000; and

(v) $175 for an estate valued at more than $168,000.

[~~(r)~~] (s) The fee for filing a demand for a civil jury is $250.

[~~(s)~~] (t) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $35.

[~~(t)~~] (u) The fee for filing documents that require judicial approval but are not part of an action before the court is $35.

[~~(u)~~] (v) The fee for a petition to open a sealed record is $35.

[~~(v)~~] (w) The fee for a writ of replevin, attachment, execution, or garnishment is $50 in addition to any fee for a complaint or petition.

[~~(w)~~] (x) (i) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6, Part 8, Emancipation, is $50.

[~~(x)~~] (y) The fee for a certificate issued under Section 26-2-25 is $8.

[~~(y)~~] (z) The fee for a certified copy of a document is $4 per document plus 50 cents per page.

[~~(z)~~] (aa) The fee for an exemplified copy of a document is $6 per document plus 50 cents per page.

[~~(aa)~~] (bb) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act. Fees under this Subsection (1)[~~(aa)~~](bb) shall be credited to the court as a reimbursement of expenditures.

[~~(bb)~~] (cc) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

[~~(cc)~~] (dd) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

[~~(dd)~~] (ee) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this Subsection

(1)[~~(dd)~~](ee) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to $3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

Section 2. Section 78B-6-209 is amended to read:

78B-6-209. Dispute Resolution Restricted Account -- Appropriation.

There is created a restricted account within the General Fund known as the "Dispute Resolution Account." Three dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)[~~(r)~~](s) shall be allocated to and deposited in the restricted account. The Legislature shall annually appropriate money from the Dispute Resolution Account to the Administrative Office of the Courts to implement the purposes of the Alternative Dispute Resolution Act.

Section 3. Section 78B-6-1801 is enacted to read:

Part 18. Renewal of Judgment Act

78B-6-1801. Title.

This part is known as the "Renewal of Judgment Act."

Section 4. Section 78B-6-1802 is enacted to read:

78B-6-1802. Renewal by motion.

A court of record may renew a judgment issued by a court if:

(1) a motion is filed within the original action;

(2) the motion is filed before the statute of limitations on the original judgment expires;

(3) the motion includes an affidavit that contains an accounting of the original judgment and all postjudgment payments, credits, and other adjustments which are provided for by law or are contained within the original judgment;

(4) the facts in the supporting affidavit are determined by the court to be accurate and the

affidavit affirms that notice was sent to the most current address known for the judgment debtor;

(5) the time for responding to the motion has expired; and

(6) the fee required by Subsection 78A-2-301(1)(l) has been paid to the clerk of the court.

Section 5. Section 78B-6-1803 is enacted to read:

78B-6-1803. Notice.

Notice of a motion for renewal of judgment is served in accordance with the Rules of Civil Procedure and opposition may be filed pursuant to the rules.

Section 6. Section 78B-6-1804 is enacted to read:

78B-6-1804. Date and duration of judgment.

Upon granting a motion for the renewal of judgment, the court shall enter an order which renews the original judgment from the date of entry of the order or from the scheduled expiration date of the original order, whichever occurs first, for the same amount of time as the original judgment.

CHAPTER 23
H. B. 15
Passed February 10, 2011
Approved March 16, 2011
Effective March 16, 2011

CONTROLLED SUBSTANCE DATABASE - LICENSING AMENDMENTS

Chief Sponsor: Bradley M. Daw
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends licensing provisions in the Controlled Substance Database Act.

Highlighted Provisions:

This bill:

- provides that an individual who is not a veterinarian, who obtains a new license to prescribe a controlled substance, shall, within 30 days after the day on which the individual obtains a license to prescribe a controlled substance from the Drug Enforcement Administration, register with the division to use the Controlled Substance Database;
- reinstates authority of the Division of Occupational and Professional Licensing to take administrative action, under the Pharmacy Practice Act, for a violation of the Controlled Substance Database Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

58-37f-401, as enacted by Laws of Utah 2010, Chapter 287
58-17b-504, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 58-17b-504 is amended to read:

58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.

(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

(3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:

(i) assess administrative penalties; and

(ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions.

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-17b-401 may not be assessed through a citation.

(d) Each citation shall be in writing and specifically describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the

citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(e) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or

(iii) by mail.

(f) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.

(h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(i) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

Section 2. Section 58-37f-401 is amended to read:

58-37f-401. Database registration required -- Penalties for failure to register.

(1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not registered with the division to use the database shall, on or before September 30, 2010, register with the division to use the database.

(2) Each individual who, on November 1, 2012, is registered with the division to use the database shall, on or before January 1, 2013, participate in the online tutorial and pass the online test described in Section 58-37f-402.

(3) (a) An individual who is not a veterinarian, who obtains a new license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, shall, within 30 days after the day on which the individual obtains a license to prescribe a controlled substance from the Drug Enforcement Administration, register with the division to use the database.

[~~(3)~~] (b) [~~Beginning on July 1, 2010, an~~] An individual who is not a veterinarian may not [~~obtain or~~] renew a license to prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, unless the individual registers with the division to use the database.

(4) Beginning on November 2, 2012, in order to register to use the database, the individual registering must participate in the online tutorial and pass the online test described in Section 58-37f-402.

(5) Failure by an individual to comply with the requirements of this section is grounds for the division to take the following actions in accordance with Section 58-1-401:

(a) refuse to issue a license to the individual;

(b) refuse to renew the individual's license; or

(c) revoke, suspend, restrict, or place on probation the license.

(6) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, impose an annual database registration fee on an individual who registers to use the database, to pay the startup and ongoing costs of the division for complying with the requirements of this section and Section 58-37f-402.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 24
H. B. 52
Passed February 17, 2011
Approved March 16, 2011
Effective May 10, 2011

LIMITATION OF ACTIONS - CRIMINAL OFFENSES

Chief Sponsor: Brad R. Wilson
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding offenses for which prosecution may be initiated at any time.

Highlighted Provisions:

This bill:

- defines predicate offenses committed incident to a homicide; and
- provides that predicate offenses to murder and aggravating offenses to aggravated murder may be prosecuted at any time.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-1-301, as last amended by Laws of Utah 2009, Chapter 280

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

Section 1. Section 76-1-301 is amended to read:

76-1-301. Offenses for which prosecution may be commenced at any time.

(1) As used in this section:

(a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202(1)(d) or (e) or Subsection 76-5-202(2).

(b) "Predicate offense" means an offense described in Section 76-5-203(1) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.

(2) Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:

[~~(1)~~] (a) capital felony;

[~~(2)~~] (b) aggravated murder;

[~~(3)~~] (c) murder;

[~~(4)~~] (d) manslaughter;

[~~(5)~~] (e) child abuse homicide;

[~~(6)~~] (f) aggravated kidnapping;

[~~(7)~~] (g) child kidnapping;

[~~(8)~~] (h) rape;

[~~(9)~~] (i) rape of a child;

[~~(10)~~] (j) object rape;

[~~(11)~~] (k) object rape of a child;

[~~(12)~~] (l) forcible sodomy;

[~~(13)~~] (m) sodomy on a child;

[~~(14)~~] (n) sexual abuse of a child;

[~~(15)~~] (o) aggravated sexual abuse of a child; [~~or~~]

[~~(16)~~] (p) aggravated sexual assault[~~.~~]; or

(q) any predicate offense to a murder or aggravating offense to an aggravated murder.

CHAPTER 25
H. B. 54
Passed March 3, 2011
Approved March 16, 2011
Effective May 10, 2011

ELECTRONIC COMMUNICATIONS IN PUBLIC MEETINGS

Chief Sponsor: Kraig Powell
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions of the Open and Public Meetings Act that relate to electronic communications between members of public bodies.

Highlighted Provisions:

This bill:

- provides definitions;
- allows a member of a public body to transmit an electronic message to other members of the public body when the public body is not convened in an open meeting; and
- makes technical modifications.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

52-4-103, as last amended by Laws of Utah 2007, Chapters 35 and 45

ENACTS:

52-4-209, Utah Code Annotated 1953

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

Section 1. Section 52-4-103 is amended to read:

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

(a) an electronic meeting originates; or

(b) the participants are connected.

(2) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(3) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(4) "Electronic message" means a communication transmitted electronically, including:

(a) electronic mail;

(b) instant messaging;

(c) electronic chat;

(d) text messaging as defined in Section 76-4-401; or

(e) any other method that conveys a message or facilitates communication electronically.

[~~(4)~~] (5) (a) "Meeting" means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance meeting;

(ii) a social meeting; or

(iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or

(B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action.

[~~(5)~~] (6) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

[~~(6)~~] (7) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

[~~(7)~~] (8) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" does not include a:

(i) political party, political group, or political caucus; or

(ii) conference committee, rules committee, or sifting committee of the Legislature.

[~~(8)~~] (9) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

[~~(9)~~] (10) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

[~~(10)~~] (11) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(12) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Section 2. Section 52-4-209 is enacted to read:

52-4-209. (Codified as 52-4-210) Electronic message transmissions.

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

CHAPTER 26
H. B. 56
Passed February 17, 2011
Approved March 16, 2011
Effective May 10, 2011

EXPUNGEMENT AMENDMENTS

Chief Sponsor: Julie Fisher
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill clarifies that a person may not receive a certificate of eligibility for an expungement if a criminal charge is pending.

Highlighted Provisions:

This bill:

- eliminates the investigation requirement for pending proceedings regarding a petitioner for an expungement; and
- clarifies that the person is ineligible for a certificate of eligibility if the person is the subject of a pending criminal proceeding.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-104, as enacted by Laws of Utah 2010, Chapter 283
77-40-105, as enacted by Laws of Utah 2010, Chapter 283

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

Section 1. Section 77-40-104 is amended to read:

77-40-104. Eligibility for expungement of records of arrest, investigation, and detention -- Requirements.

(1) A person who has been arrested with or without a warrant may apply to the bureau for a certificate of eligibility to expunge all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

(a) at least 30 days have passed since the arrest for which a certificate of eligibility is sought;

(b) there [~~have been no intervening arrests~~] are no criminal proceedings pending against the petitioner; and

(c) one of the following occurred:

(i) charges were screened by the investigating law enforcement agency and the prosecutor has made a final determination that no charges will be filed;

(ii) the action against the person was dismissed with prejudice;

(iii) the person was acquitted at trial; or

(iv) the statute of limitations has expired on the offense.

(2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under Subsection (1)(c)(iii) shall be issued a certificate of eligibility on an expedited basis.

Section 2. Section 77-40-105 is amended to read:

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of a crime may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); or

(vi) a registerable sex offense as defined in Subsection 77-27-21.5(1)(n);

(b) a criminal proceeding [~~involving a crime~~] is pending [~~or being investigated in any jurisdiction~~] against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a criminal record is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony violation of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of a class A misdemeanor;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions of any degree whether misdemeanor or felony, excluding infractions, each of which is contained in a separate criminal episode.

(5) If the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to a certificate of eligibility for all pardoned crimes.

CHAPTER 27
H. B. 66
Passed February 25, 2011
Approved March 16, 2011
Effective May 10, 2011

HEALTH PROFESSIONAL AUTHORITY - DEATH CERTIFICATES

Chief Sponsor: Bradley G. Last
Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends the Vital Statistics Act.

Highlighted Provisions:

This bill:

- amends definitions in the Vital Statistics Act to allow a nurse practitioner to sign a death certificate if employed by a health care facility.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-2, as last amended by Laws of Utah 2009, Chapters 66 and 68

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

Section 1. Section 26-2-2 is amended to read:

26-2-2. Definitions.

As used in this chapter:

(1) "Advanced practice registered nurse" means a person licensed to practice as an advanced practice registered nurse in this state under Title 58, Chapter 31b, Nurse Practice Act.

(2) "Custodial funeral service director" means a funeral service director who:

(a) is employed by a licensed funeral establishment; and

(b) has custody of a dead body.

(3) "Dead body" or "decedent" means a human body or parts of the human body from the condition of which it reasonably may be concluded that death occurred.

(4) "Dead fetus" means a product of human conception:

(a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and

(b) that was not born alive.

(5) "Declarant father" means a male who claims to be the genetic father of a child, and, along with the biological mother, signs a voluntary declaration of paternity to establish the child's paternity.

(6) "Dispositioner" means:

(a) a person designated in a written instrument, under Subsection 58-9-602(1), as having the right and duty to control the disposition of the decedent, if the person voluntarily acts as the dispositioner; or

(b) the next of kin of the decedent, if:

(i) (A) a person has not been designated as described in Subsection (6)(a); or

(B) the person described in Subsection (6)(a) is unable or unwilling to exercise the right and duty described in Subsection (6)(a); and

(ii) the next of kin voluntarily acts as the dispositioner.

(7) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this chapter for registration by the state registrar or a local registrar.

(8) "Funeral service director" is as defined in Section 58-9-102.

(9) "Health care facility" is as defined in Section 26-21-2.

(10) "Health care professional" means a physician or nurse practitioner.

(11) "Licensed funeral establishment" means a funeral service establishment, as defined in Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act.

(12) "Live birth" means the birth of a child who shows evidence of life after the child is entirely outside of the mother.

(13) "Local registrar" means a person appointed under Subsection 26-2-3(2)(b).

(14) "Nurse practitioner" means an advanced practice registered nurse specializing as a nurse practitioner who[~~:(a)~~] has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[~~;~~].

[~~(b) is in independent practice or a group practice; and~~]

[~~(c) is not employed by a health care facility licensed under Chapter 21, Health Care Facility Licensing and Inspection Act.~~]

(15) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.

(16) "Presumed father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.

(17) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of the certificate into the permanent records of the state.

(18) "State registrar" means the state registrar of vital records appointed under Subsection 26-2-3(1)(e).

(19) "Vital records" means:

(a) registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment;

(b) amendments to any of the registered certificates or reports described in Subsection (19)(a); and

(c) other similar documents.

(20) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

CHAPTER 28
H. B. 71
Passed February 23, 2011
Approved March 16, 2011
Effective May 10, 2011

VICTIM RIGHTS AMENDMENTS

Chief Sponsor: Brad R. Wilson
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill adds parole and probation hearings to the hearings at which a victim or a victim's representative may be present.

Highlighted Provisions:

This bill:

- adds that a victim's representative may attend certain important criminal justice hearings in the victim's place; and
- adds probation and parole hearings to the list of hearings at which a victim or representative may be present and heard.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38-4, as last amended by Laws of Utah 2008, Chapter 321

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

Section 1. Section 77-38-4 is amended to read:

77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.

(1) The victim of a crime, the representative of the victim, or both shall have the right:

(a) to be present at the important criminal or juvenile justice hearings provided in [~~Subsections~~] Subsection 77-38-2(5)[~~(a) through (f)~~];

(b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), [~~and~~] (f), and (g);

(c) to submit a written statement in any action on appeal related to that crime; and

(d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.

(2) This chapter shall not confer any right to the victim of a crime to be heard:

(a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and

(b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.

(3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.

(4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

(5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.

(6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.

(7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.

(8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.

(9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

(10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

CHAPTER 29
H. B. 74
Passed March 3, 2011
Approved March 16, 2011
Effective May 10, 2011

MUNICIPAL JUSTICE COURT JUDGE ELECTIONS

Chief Sponsor: Kenneth W. Sumsion
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill changes the requirements for a retention election vote for justice court judges.

Highlighted Provisions:

This bill:

- changes the retention election requirements for municipal justice court judges in cities of the first, second, and third class from the entire county to the municipality where the judge sits;
- clarifies that a justice court judge standing for retention in more than one location who is retained in one location and not retained in another does not lose both offices; and
- makes a technical correction.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-12-201, as last amended by Laws of Utah 2008, Chapters 93 and 225

78A-7-202, as last amended by Laws of Utah 2009, Chapter 146

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

Section 1. Section 20A-12-201 is amended to read:

20A-12-201. Judicial appointees -- Retention elections.

(1) (a) Each judicial appointee to a court is subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed.

(b) After the first retention election:

(i) each Supreme Court justice shall be on the regular general election ballot for an unopposed retention election every tenth year; and

(ii) each judge of other courts shall be on the regular general election ballot for an unopposed retention election every sixth year.

(2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy as if a candidate for multi-county office in accordance with Section 20A-9-202; and

(ii) pay a filing fee of $50.

(b) Each justice court judge who wishes to retain office shall, in the year the justice court judge is subject to a retention election:

(i) file a declaration of candidacy as if a candidate for county office in accordance with Section 20A-9-202; and

(ii) pay a filing fee of $25.

(3) (a) The lieutenant governor shall, no later than September 8 of each regular general election year:

(i) transmit a certified list containing the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

(ii) transmit a certified list containing the names of judges of other courts declaring their candidacy to the county clerk of each county in the geographic division in which the judge filing the declaration holds office.

(b) Each county clerk shall place the names of justices and judges standing for retention election in the nonpartisan section of the ballot.

(4) At the general election, the ballots shall contain, as to each justice or judge of any court to be voted on in the county, the following question:

"Shall _____(name of justice or judge) be retained in the office of _____?" (name of office, such as "Justice of the Supreme Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District"; "Justice Court Judge of (name of county) County or (name of municipality)")

Yes ()

No ()."

(5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge is retained for the term of office provided by law.

(b) If the justice or judge does not receive more yes votes than no votes, the justice or judge is not retained, and a vacancy exists in the office on the first Monday in January after the regular general election.

(6) A justice or judge not retained is ineligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

(7) If a justice court judge is standing for retention for more than one office, the county clerk shall place the judge's name on the ballot separately for each office. If the justice court judge receives more no votes than yes votes in one office, but more yes votes than no votes in the other, the justice court judge shall be retained only in the office for which the judge received more yes votes than no votes.

Section 2. Section 78A-7-202 is amended to read:

78A-7-202. Justice court judges to be appointed -- Procedure -- Retention.

(1) As used in this section:

(a) "Local government executive" means:

(i) for a county:

(A) the chair of the county commission in a county operating under the county commission or expanded county commission form of county government;

(B) the county executive in a county operating under the county executive-council form of county government; and

(C) the county manager in a county operating under the council-manager form of county government; and

(ii) for a city or town:

(A) the mayor of the city or town; or

(B) the city manager, in the council-manager form of government described in Subsection 10-3b-103(6).

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) There is created in each county a county justice court nominating commission to review applicants and make recommendations to the appointing authority for a justice court position. The commission shall be convened when a new justice court judge position is created or when a vacancy in an existing court occurs for a justice court located within the county.

(a) Membership of the justice court nominating commission shall be as follows:

(i) one member appointed by:

(A) the county commission if the county has a county commission form of government; or

(B) the county executive if the county has an executive-council form of government;

(ii) one member appointed by the municipalities in the counties as follows:

(A) if the county has only one municipality, appointment shall be made by the governing authority of that municipality; or

(B) if the county has more than one municipality, appointment shall be made by a municipal selection committee composed of the mayors of each municipality in the county;

(iii) one member appointed by the county bar association; and

(iv) two members appointed by the governing authority of the jurisdiction where the judicial office is located.

(b) If there is no county bar association, the member in Subsection (2)(a)(iii) shall be appointed by the regional bar association. If no regional bar association exists, the state bar association shall make the appointment.

(c) Members appointed under Subsections (2)(a)(i) and (ii) may not be an elected official of the county or municipality.

(d) The nominating commission shall submit at least two names to the appointing authority of the jurisdiction expected to be served by the judge. The local government executive shall appoint a judge from the list submitted and the appointment ratified by the local legislative body.

(e) The state court administrator shall provide staff to the commission. The Judicial Council shall establish rules and procedures for the conduct of the commission.

(3) Judicial vacancies shall be advertised in a newspaper of general circulation, through the Utah State Bar, and other appropriate means.

(4) Selection of candidates shall be based on compliance with the requirements for office and competence to serve as a judge.

(5) Once selected, the Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program.

(6) The selection of a person to fill the office of justice court judge is effective upon certification of the judge by the Judicial Council. A justice court judge may not perform judicial duties until certified by the Judicial Council.

(7) Upon the expiration of a justice court judge's term of office, the judge shall be subject to an unopposed retention election [~~in the county or counties in which the court to which the judge is appointed is located,~~] in accordance with the procedures set forth in Section 20A-12-201[~~.~~]:

(a) in the county or counties in which the court to which the judge is appointed is located if the judge is a county justice court judge or a municipal justice court judge in a town or city of the fourth or fifth class; or

(b) in the municipality in which the court to which the judge is appointed is located if the judge is a municipal justice court judge and Subsection (7)(a) does not apply.

(8) Before each retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in [~~Subsection 78A-2-104(5)~~] Section 78A-12-203.

CHAPTER 30
H. B. 83
Passed March 1, 2011
Approved March 16, 2011
Effective March 16, 2011

CHARTER SCHOOL REVOLVING ACCOUNT

Chief Sponsor: Gregory H. Hughes
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill reorganizes provisions relating to a revolving loan account for charter schools.

Highlighted Provisions:

This bill:

- eliminates the Charter School Building Revolving Subaccount within the School Building Revolving Account and creates the Charter School Revolving Account within the Uniform School Fund;
- specifies the permitted uses of funds in the Charter School Revolving Account and procedures for making loans from the account;
- provides that the assets of, and loan payments for loans made from, the Charter School Building Revolving Subaccount shall be deposited into the Charter School Revolving Account; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

53A-21-401, as last amended by Laws of Utah 2010, Chapter 162

63J-1-602.3, as enacted by Laws of Utah 2010, Chapter 265

ENACTS:

53A-1a-522, Utah Code Annotated 1953

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

Section 1. Section 53A-1a-522 is enacted to read:

53A-1a-522. Charter School Revolving Account.

(1) As used in this section, "account" means the Charter School Revolving Account.

(2) (a) There is created within the Uniform School Fund a restricted account known as the "Charter School Revolving Account" to provide assistance to charter schools to:

(i) meet school building construction and renovation needs; and

(ii) pay for expenses related to the start up of a new charter school or the expansion of an existing charter school.

(b) The State Board of Education, in consultation with the State Charter School Board, shall administer the Charter School Revolving Account in accordance with rules adopted by the State Board of Education.

(3) The Charter School Revolving Account shall consist of:

(a) money appropriated to the account by the Legislature;

(b) money received from the repayment of loans made from the account; and

(c) interest earned on money in the account.

(4) The state superintendent of public instruction shall make loans to charter schools from the account to pay for the costs of:

(a) planning expenses;

(b) constructing or renovating charter school buildings;

(c) equipment and supplies; or

(d) other start-up or expansion expenses.

(5) Loans to new charter schools or charter schools with urgent facility needs may be given priority.

(6) (a) The State Board of Education shall establish a committee to:

(i) review requests by charter schools for loans under this section; and

(ii) make recommendations regarding approval or disapproval of the loan applications to the State Charter School Board and the State Board of Education.

(b) (i) A committee established under Subsection (6)(a) shall include individuals who have expertise or experience in finance, real estate, or charter school administration.

(ii) Of the members appointed to a committee established under Subsection (6)(a):

(A) one member shall be nominated by the governor; and

(B) the remaining members shall be selected from a list of nominees submitted by the State Charter School Board.

(c) If the committee recommends approval of a loan application under Subsection (6)(a)(ii), the committee's recommendation shall include:

(i) the recommended amount of the loan;

(ii) the payback schedule; and

(iii) the interest rate to be charged.

(d) A committee member may not:

(i) be a relative, as defined in Section 53A-1a-518, of a loan applicant; or

(ii) have a pecuniary interest, directly or indirectly, with a loan applicant or any person or entity that contracts with a loan applicant.

(7) A loan under this section may not be made unless the State Board of Education, in consultation with the State Charter School Board, approves the loan.

(8) The term of a loan to a charter school under this section may not exceed five years.

(9) The State Board of Education may not approve loans to charter schools under this section that exceed a total of $2,000,000 in any fiscal year.

(10) (a) On the effective date of this bill, the assets of the Charter School Building Subaccount administered by the State Board of Education shall be deposited into the Charter School Revolving Account.

(b) Beginning on the effective date of this bill, loan payments for loans made from the Charter School Building Subaccount shall be deposited into the Charter School Revolving Account.

Section 2. Section 53A-21-401 is amended to read:

Part 4. School Building Revolving Account

53A-21-401. School Building Revolving Account -- Access to the account.

(1) (a) There is created[~~: (a) the "Capital Outlay Loan Program" to provide: (i)~~] within the Uniform School Fund a restricted account known as the "School Building Revolving Account" to provide short-term help to school districts to meet district needs for school building construction and renovation[~~; and~~].

[~~(ii) assistance to charter schools to meet school building construction and renovation needs; and~~]

(b) [~~a nonlapsing "School Building Revolving Account" administered within the Uniform School Fund by the~~] The state superintendent of public instruction shall administer the School Building Revolving Account in accordance with rules adopted by the State Board of Education.

(2) The State Board of Education may not allocate funds from the School Building Revolving Account that exceed a school district's bonding limit minus its outstanding bonds.

(3) In order to receive money from the [~~account~~] School Building Revolving Account, a school district shall:

(a) levy a combined capital levy rate of at least .0024;

(b) contract with the state superintendent of public instruction to repay the money, with interest at a rate established by the state superintendent, within five years of receipt, using future state capital outlay allocations, local revenues, or both;

(c) levy sufficient ad valorem taxes under Section 11-14-310 to guarantee annual loan repayments, unless the state superintendent of public instruction alters the payment schedule to improve a hardship situation; and

(d) meet any other condition established by the State Board of Education pertinent to the loan.

(4) (a) The state superintendent shall establish a committee, including representatives from state and local education entities, to:

(i) review requests by school districts for loans under this section; and

(ii) make recommendations regarding approval or disapproval of the loan applications to the state superintendent.

(b) If the committee recommends approval of a loan application under Subsection (4)(a)(ii), the committee's recommendation shall include:

(i) the recommended amount of the loan;

(ii) the payback schedule; and

(iii) the interest rate to be charged.

[~~(5) (a) There is established within the School Building Revolving Account the Charter School Building Subaccount administered by the State Board of Education, in consultation with the State Charter School Board, in accordance with rules adopted by the State Board of Education.~~]

[~~(b) The Charter School Building Subaccount shall consist of:~~]

[~~(i) money appropriated to the subaccount by the Legislature;~~]

[~~(ii) money received from the repayment of loans made from the subaccount; and~~]

[~~(iii) interest earned on money in the subaccount.~~]

[~~(c) The state superintendent of public instruction shall make loans to charter schools from the Charter School Building Subaccount to pay for the costs of:~~]

[~~(i) planning expenses;~~]

[~~(ii) constructing or renovating charter school buildings;~~]

[~~(iii) equipment and supplies; or~~]

[~~(iv) other start-up or expansion expenses.~~]

[~~(d) Loans to new charter schools or charter schools with urgent facility needs may be given priority.~~]

[~~(6) (a) The State Board of Education shall establish a committee to:~~]

[~~(i) review requests by charter schools for loans under this section; and~~]

[~~(ii) make recommendations regarding approval or disapproval of the loan applications to the State Charter School Board and the State Board of Education.~~]

[~~(b) (i) A committee established under Subsection (6)(a) shall include individuals who have expertise or experience in finance, real estate, or charter school administration.~~]

[~~(ii) Of the members appointed to a committee established under Subsection (6)(a):~~]

[~~(A) one member shall be nominated by the governor; and~~]

[~~(B) the remaining members shall be selected from a list of nominees submitted by the State Charter School Board.~~]

[~~(c) If the committee recommends approval of a loan application under Subsection (6)(a)(ii), the committee's recommendation shall include:~~]

[~~(i) the recommended amount of the loan;~~]

[~~(ii) the payback schedule; and~~]

[~~(iii) the interest rate to be charged.~~]

[~~(d) The committee members may not:~~]

[~~(i) be a relative, as defined in Section 53A-1a-518, of a loan applicant; or~~]

[~~(ii) have a pecuniary interest, directly or indirectly, with a loan applicant or any person or entity that contracts with a loan applicant.~~]

[~~(7) The State Board of Education, in consultation with the State Charter School Board, shall approve all loans to a charter school under this section.~~]

[~~(8) The term of a loan to a charter school under this section may not exceed five years.~~]

[~~(9) The State Board of Education may not approve loans to charter schools under this section that exceed a total of $2,000,000 in any year.~~]

Section 3. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) Certain funds associated with the Law Enforcement Operations Account, as provided in Section 51-9-411.

(2) The Public Safety Honoring Heroes Restricted Account created in Section 53-1-118.

(3) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2-107.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) The DNA Specimen Restricted Account created in Section 53-10-407.

(7) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

(8) Certain funds appropriated from the Uniform School Fund to the State Board of Education for new teacher bonus and performance-based compensation plans, as provided in Section 53A-17a-148.

[~~(9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for implementation of proposals to improve mathematics achievement test scores, as provided in Section 53A-17a-152.~~]

[~~(10) The School Building Revolving Account created in Section 53A-21-401.~~]

[~~(11)~~] (9) Money received by the State Office of Rehabilitation for the sale of certain products or services, as provided in Section 53A-24-105.

[~~(12) The State Board of Regents, as provided in Section 53B-6-104.~~]

[~~(13)~~] (10) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

[~~(14)~~] (11) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

[~~(15)~~] (12) Certain surcharges on residence and business telecommunications access lines imposed by the Public Service Commission, as provided in Section 54-8b-10.

[~~(16)~~] (13) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

[~~(17)~~] (14) The Nurse Education and Enforcement Account created in Section 58-31b-103.

[~~(18)~~] (15) The Certified Nurse Midwife Education and Enforcement Account created in Section 58-44a-103.

[~~(19)~~] (16) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

[~~(20)~~] (17) The Professional Geologist Education and Enforcement Account created in Section 58-76-103.

[~~(21)~~] (18) Certain money in the Water Resources Conservation and Development Fund, as provided in Section 59-12-103.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 5. Revisor instructions.

It is the intent of the Legislature, that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the phrase "the effective date of this bill" in Subsections 53A-1a-522(10)(a) and 53A-1a-522(10)(b) with the bill's actual effective date.

CHAPTER 31
H. B. 106
Passed March 3, 2011
Approved March 16, 2011
Effective May 10, 2011

ELECTRONIC MEETINGS REVISIONS

Chief Sponsor: Bradley M. Daw
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions of the Open and Public Meetings Act relating to electronic meetings.

Highlighted Provisions:

This bill:

- defines terms;
- establishes a pilot program for charter schools to conduct electronic meetings that:
  - establish time limits on the electronic meeting;
  - prohibit closed meetings;
  - provide a method for public notice and participation; and
  - require new notice to be given each time a topic to be considered at an electronic meeting has not been listed as an agenda item;
- establishes reporting requirements to the Public Utilities and Technology Interim Committee; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

52-4-207, as last amended by Laws of Utah 2007, Chapter 45

ENACTS:

52-4-209, Utah Code Annotated 1953

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

Section 1. Section 52-4-207 is amended to read:

52-4-207. Electronic meetings -- Authorization -- Requirements.

(1) [A] Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;

(ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or

(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

(a) give public notice of the meeting:

(i) in accordance with Section 52-4-202; and

(ii) post written notice at the anchor location;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the electronic meeting;

(c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

(d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Section 2. Section 52-4-209 is enacted to read:

52-4-209. Electronic meetings for charter schools -- Pilot program.

(1) As used in this section, "charter school" means a school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.

(2) The Electronic Meetings for Charter Schools Pilot Program is created to pilot the development

and implementation of electronic meetings for charter schools.

(3) Beginning May 10, 2011, and ending May 8, 2012, a charter school may convene and conduct an electronic meeting in accordance with this section.

(4) A charter school that conducts an electronic meeting under this section shall:

(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and

(ii) by posting written notice at the anchor location as required under Section 52-4-207;

(b) in addition to giving public notice required by Subsection (4)(a), provide:

(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;

(ii) a description of how the members will be connected to the electronic meeting; and

(iii) a start and end time for the meeting, which shall be no longer than 24 hours; and

(c) provide space, facilities, and technology in the building where the charter school board would normally meet if they were not holding an electronic meeting so the public may attend, monitor, and participate in the meeting during regular business hours.

(5) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.

(6) Written minutes and a recording shall be kept of an electronic meeting conducted as required in Section 52-4-203.

(7) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.

(8) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

(9) A charter school that conducts an electronic meeting under this section shall report to the Public Utilities and Technology Interim Committee by October 1, 2011, as to the effectiveness of conducting business via electronic meetings under this section.

CHAPTER 32
H. B. 121
Passed March 4, 2011
Approved March 16, 2011
Effective May 10, 2011

SEXUAL SOLICITATION AMENDMENTS

Chief Sponsor: Jennifer M. Seelig
Senate Sponsor: Curtis S. Bramble
Cosponsors: Derek E. Brown
Rebecca Chavez-Houck
Susan Duckworth
Janice M. Fisher
Francis D. Gibson
Lynn N. Hemingway
Christopher N. Herrod
Don L. Ipson
Ken Ivory
Brian S. King
David Litvack
Carol Spackman Moss
Jeremy A. Peterson
Marie H. Poulson
Paul Ray
Christine F. Watkins
Mark A. Wheatley
Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the offense of sexual solicitation.

Highlighted Provisions:

This bill:

- clarifies the acts that constitute sexual solicitation with the intent to engage in prostitution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1313, as enacted by Laws of Utah 1993, Chapter 179

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

Section 1. Section 76-10-1313 is amended to read:

76-10-1313. Sexual solicitation -- Penalty.

(1) A person is guilty of sexual solicitation when the person:

(a) [~~he~~] offers or agrees to commit any sexual activity with another person for a fee; [~~or~~]

(b) [~~he~~] pays or offers or agrees to pay a fee to another person to commit any sexual activity [~~for a fee.~~]; or

(c) with intent to engage in sexual activity for a fee or to pay another person to commit any sexual activity for a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:

(i) exposure of a person's genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;

(ii) masturbation;

(iii) touching of a person's genitals, the buttocks, the anus, the pubic area, or the female breast; or

(iv) any act of lewdness.

(2) An intent to engage in sexual activity for a fee may be inferred from a person's engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

[~~(2)~~] (3) (a) Sexual solicitation is a class B misdemeanor[~~. However, any~~], except under Subsection (3)(b).

(b) Any person who is convicted a second [~~time, and on all subsequent convictions,~~] or subsequent time under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

CHAPTER 33
H. B. 212
Passed March 1, 2011
Approved March 16, 2011
Effective May 10, 2011

CHARGES BY HEALTH PROVIDERS FOR MEDICAL RECORDS

Chief Sponsor: Francis D. Gibson
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions of the Judicial Code relating to patient access to medical records.

Highlighted Provisions:

This bill:

- establishes a time limitation for a health care provider to provide medical records to a patient, a patient's personal representative, or a third party;
- establishes charges that a health care provider may charge when copying a patient's medical records; and
- provides a repeal date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-2-278, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382

78B-5-618, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 63I-2-278 is amended to read:

63I-2-278. Repeal dates, Title 78A and Title 78B.

(1) Section 78A-9-103, Practicing law without a license, is repealed May 3, 2012.

(2) Subsections 78B-12-301(1) and 78B-12-302(1) are repealed January 1, 2010.

(3) Subsection 78B-5-618(4) is repealed January 1, 2016.

Section 2. Section 78B-5-618 is amended to read:

78B-5-618. Patient access to medical records.

(1) Pursuant to 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider as defined in Section 78B-3-403, when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(2) When a health care provider as defined in Section 78B-3-403 is not governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(3) A health care provider who provides a copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee [~~to cover the health care provider's costs.~~] provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient representative has requested the copy be mailed.

(4) Except for records provided by a health care provider under Section 26-1-37, a health care provider who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after receipt of notice; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) $20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

CHAPTER 34
H. B. 219
Passed February 15, 2011
Approved March 16, 2011
Effective May 10, 2011

STATE FIREARM DESIGNATION

Chief Sponsor: Carl Wimmer
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill modifies the state symbols and designations to designate the Browning model M1911 automatic pistol as the state firearm.

Highlighted Provisions:

This bill:

- designates the John M. Browning designed M1911 automatic pistol as the state firearm.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-1-601, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63G-1-601 is amended to read:

63G-1-601. State symbols.

(1) Utah's state animal is the elk.

(2) Utah's state bird is the sea gull.

(3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.

(4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.

(5) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.

(6) Utah's state cooking pot is the dutch oven.

(7) Utah's state emblem is the beehive.

(8) Utah's state firearm is the John M. Browning designed M1911 automatic pistol.

[~~(8)~~] (9) Utah's state fish is the Bonneville cutthroat trout.

[~~(9)~~] (10) Utah's state flower is the sego lily.

[~~(10)~~] (11) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.

[~~(11)~~] (12) Utah's state fossil is the Allosaurus.

[~~(12)~~] (13) Utah's state fruit is the cherry.

[~~(13)~~] (14) Utah's state vegetable is the Spanish sweet onion.

[~~(14)~~] (15) Utah's historic state vegetable is the sugar beet.

[~~(15)~~] (16) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

[~~(16)~~] (17) Utah's state grass is Indian rice grass.

[~~(17)~~] (18) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.

[~~(18)~~] (19) Utah's state insect is the honeybee.

[~~(19)~~] (20) Utah's state mineral is copper.

[~~(20)~~] (21) Utah's state motto is "Industry."

[~~(21)~~] (22) Utah's state railroad museum is Ogden Union Station.

[~~(22)~~] (23) Utah's state rock is coal.

[~~(23)~~] (24) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.

[~~(24)~~] (25) Utah's state tree is the blue spruce.

CHAPTER 35
H. B. 248
Passed February 28, 2011
Approved March 16, 2011
Effective May 10, 2011

COUNTY OFFICE VACANCIES

Chief Sponsor: Carl Wimmer
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends provisions related to midterm vacancies in county elected offices.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions related to midterm vacancies in county elected offices;
- amends provisions related to a party liaison; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-1-508, as last amended by Laws of Utah 2010, Chapter 197
20A-8-401, as last amended by Laws of Utah 2010, Chapter 177
20A-8-402, as last amended by Laws of Utah 1999, Chapter 49

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

Section 1. Section 20A-1-508 is amended to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) (i) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

[~~(b)~~] (ii) "County offices" does not mean the offices of president and vice president of the United States, United States senators and representatives, members of the Utah Legislature, state constitutional officers, county attorneys, district attorneys, and judges.

(b) "Party liaison" means the political party officer designated to serve as a liaison with each county legislative body on all matters relating to the political party's relationship with a county as required by Section 20A-8-401.

(2) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this Subsection (2).

(b) (i) To appoint an interim replacement, the county legislative body shall give notice of the vacancy to the [~~county central committee~~] party liaison of the same political party of the prior office holder and invite that [~~committee~~] party liaison to submit the [~~names of three nominees~~] name of a person to fill the vacancy.

(ii) That [~~county central committee~~] party liaison shall, within 30 days, submit the [~~names of three nominees~~] name of the person selected in accordance with the party constitution or bylaws as described in Section 20A-8-401 for the interim replacement to the county legislative body.

(iii) The county legislative body shall[~~, within 45 days after the vacancy occurs, appoint one of those nominees~~] no later than five days after the day on which a party liaison submits the name of the person for the interim replacement appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy [~~within 45 days~~] in accordance with Subsection (2)(b)(iii), the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the [~~list of nominees~~] name of the person to fill the vacancy submitted by the [~~party central committee~~] party liaison.

(ii) The governor shall appoint the person named by the party liaison as an interim replacement [~~from that list of nominees~~] to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed as interim replacement under this Subsection (2) shall hold office until their successor is elected and has qualified.

(3) (a) The requirements of this Subsection (3) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the person was elected but before April 10 of the next even-numbered year.

(b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(ii) All persons intending to become candidates for the vacant office shall:

(A) file a declaration of candidacy according to the procedures and requirements of Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) if nominated as a party candidate or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general election.

(4) (a) The requirements of this Subsection (4) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50 days before the regular primary election.

(b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk shall notify the public and each registered political party that:

(A) the vacancy exists; and

(B) identifies the date and time by which a person interested in becoming a candidate must file a declaration of candidacy.

(ii) All persons intending to become candidates for the vacant offices shall, within five days after the date that the notice is made, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk at least 35 days before the regular primary election.

(5) (a) The requirements of this Subsection (5) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 50 days or less remain before the regular primary election but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county central committees of each political party registered under this title that wishes to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(6) (a) The requirements of this Subsection (6) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the [~~county central committee~~] party liaison of the same political party as the prior office holder and invite that [~~committee~~] party liaison to submit the [~~names of three nominees~~] name of a person to fill the vacancy.

(ii) That [~~county central committee~~] party liaison shall, within 30 days, submit the [~~names of three nominees~~] name of the person to fill the vacancy to the county legislative body.

(iii) The county legislative body shall[~~, within 45 days after the vacancy occurs, appoint one of those nominees~~] no later than five days after the day on which a party liaison submits the name of the person to fill the vacancy appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy [~~within 45 days~~] in accordance with Subsection (6)(b)(iii), the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(B) contains the [~~list of nominees~~] name of the person to fill the vacancy submitted by the [~~party central committee~~] party liaison.

(ii) The governor shall appoint [~~a person to fill the vacancy from that list of nominees~~] the person named by the party liaison to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed to fill the vacancy under this Subsection (6) shall hold office until their successor is elected and has qualified.

(7) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(8) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

(9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a county office shall serve for the remainder of the unexpired term of the person who created the vacancy and until a successor is elected and qualified.

(b) Nothing in this section may be construed to contradict or alter the provisions of Section 17-16-6.

Section 2. Section 20A-8-401 is amended to read:

20A-8-401. Registered political parties -- Bylaws.

(1) (a) Each registered state political party shall file a copy of its constitution and bylaws with the lieutenant governor by January 1, 1995.

(b) Each new or unregistered state political party that seeks to become a registered political party under the authority of this chapter shall file a copy of its proposed constitution and bylaws at the time it files its registration information.

(c) Each registered state political party shall file revised copies of its constitution or bylaws with the lieutenant governor within 15 days after the constitution or bylaws are adopted or amended.

(2) Each state political party, each new political party seeking registration, and each unregistered political party seeking registration shall ensure that its constitution or bylaws contain:

(a) provisions establishing party organization, structure, membership, and governance that include:

(i) a description of the position, selection process, qualifications, duties, and terms of each party officer and committees defined by constitution and bylaws;

(ii) a provision requiring a designated party officer to serve as liaison with:

(A) the lieutenant governor on all matters relating to the political party's relationship with the state; and

(B) each county legislative body on matters relating to the political party's relationship with a county;

(iii) a description of the requirements for participation in party processes;

(iv) the dates, times, and quorum of any regularly scheduled party meetings, conventions, or other conclaves; and

(v) a mechanism for making the names of delegates, candidates, and elected party officers available to the public shortly after they are selected;

(b) a procedure for selecting party officers that allows active participation by party members;

(c) a procedure for selecting party candidates at the federal, state, and county levels that allows active participation by party members;

(d) (i) a procedure for selecting electors who are pledged to cast their votes in the electoral college for the party's candidates for president and vice president of the United States; and

(ii) a procedure for filling vacancies in the office of presidential elector because of death, refusal to act, failure to attend, ineligibility, or any other cause;

(e) a procedure for filling vacancies in the office of representative or senator or a county office, as described in Section 20A-1-508, because of death, resignation, or ineligibility;

(f) a provision requiring the governor and lieutenant governor to run as a joint ticket;

(g) a procedure for replacing party candidates who die, become disabled, or are disqualified before a primary or regular general election;

(h) provisions governing the deposit and expenditure of party funds, and governing the accounting for, reporting, and audit of party financial transactions;

(i) provisions governing access to party records;

(j) a procedure for amending the constitution or bylaws that allows active participation by party members or their representatives;

(k) a process for resolving grievances against the political party; and

(l) if desired by the political party, a process for consulting with, and obtaining the opinion of, the political party's Utah Senate and Utah House members about:

(i) the performance of the two United States Senators from Utah, including specifically:

(A) their views and actions regarding the defense of state's rights and federalism; and

(B) their performance in representing Utah's interests;

(ii) the members' opinion about, or rating of, and support or opposition to the policy positions of any candidates for United States Senate from Utah, including incumbents, including specifically:

(A) their views and actions regarding the defense of state's rights and federalism; and

(B) their performance in representing Utah's interests; and

(iii) the members' collective or individual endorsement or rating of a particular candidate for United States Senate from Utah.

Section 3. Section 20A-8-402 is amended to read:

20A-8-402. Political party officers -- Submission of names of officers to the lieutenant governor.

(1) Each state political party shall:

(a) designate a party officer to act as liaison with:

(i) the lieutenant governor's office; and

(ii) each county legislative body; and

(b) within seven days of any change in the party liaison, submit the name of the new liaison to the lieutenant governor.

(2) Each state political party and each county political party shall:

(a) submit the names of its officers to the lieutenant governor within seven days after the officers are selected; and

(b) within seven days of any change in party officers, submit the names of the new officers to the lieutenant governor.

CHAPTER 36
H. B. 265
Passed February 28, 2011
Approved March 16, 2011
Effective March 16, 2011

MOTOR VEHICLE EMISSIONS AMENDMENTS

Chief Sponsor: Francis D. Gibson
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:
This bill modifies the Motor Vehicles Code by amending provisions relating to motor vehicle emissions.

Highlighted Provisions:
This bill:

- provides that certain county regulations and ordinances shall be compliant with the analyzer design and certification requirements contained in the state implementation plan; and
- makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:
41-6a-1642, as last amended by Laws of Utah 2010, Chapter 295

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

Section 1. Section 41-6a-1642 is amended to read:

41-6a-1642. Emissions inspection -- County program.

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection (6); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements; [~~and~~]

(ii) may allow for a phase-in of the program by geographical area[~~.~~]; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection (2)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

(3) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1; and

(d) a custom vehicle as defined in Section 41-6a-1507.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(5) (a) Subject to Subsection (5)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection (5).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection (5) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection (5).

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection (6)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative body of a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection (6)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection (6)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

(7) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.

(8) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

(9) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by $2.50 for each year that is exempted from emissions inspections under Subsection (6)(c) up to a $7.50 increase.

(10) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee shall use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 37
H. B. 266
Passed March 3, 2011
Approved March 16, 2011
Effective May 10, 2011

RESTITUTION AMENDMENTS

Chief Sponsor: David Clark
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill allows a judgment ordering restitution under Section 77-38a-401 to only expire upon payment in full.

Highlighted Provisions:

This bill:

- allows a judgment ordering restitution under Section 77-38a-401 to expire only upon payment in full, when the judgment is entered on the civil judgment docket, notwithstanding Sections 77-18-6 and 78B-5-202.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38a-401, as last amended by Laws of Utah 2009, Chapter 111

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

Section 1. Section 77-38a-401 is amended to read:

77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.

(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil judgment docket and provide notice of the order to the parties.

(2) The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(3) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and reasonable attorney fees.

(4) Notwithstanding [~~Section~~] Subsection 77-18-6(1)(b)(v) and Sections 78B-2-311[~~,~~] and 78B-5-202, a judgment ordering restitution when entered on the civil judgment docket shall have the same affect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest. This Subsection (4) applies to all restitution judgments not paid in full on or before May 12, 2009.

(5) The department shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

CHAPTER 38
H. B. 358
Passed March 9, 2011
Approved March 16, 2011
Effective May 10, 2011

ACCESS TO CONTROLLED SUBSTANCE DATABASE REVISIONS

Chief Sponsor: Steve Eliason
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Controlled Substance Database Act regarding parties who have access to the database.

Highlighted Provisions:

This bill:

- provides controlled substance database access to employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37f-301, as enacted by Laws of Utah 2010, Chapter 287 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 312

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

Section 1. Section 58-37f-301 is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies; or

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification

number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(3)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances; or

(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

(h) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;

[~~(h)~~] (i) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)[~~(h)~~](i)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)[~~(h)~~](i)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)[~~(h)~~](i)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)[~~(h)~~](i), from the database; and

[~~(i)~~] (j) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made.

(3) (a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (2)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (2)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(4) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

CHAPTER 39
H. B. 461
Passed March 9, 2011
Approved March 16, 2011
Effective March 16, 2011

ENERGY PRODUCER STATES' AGREEMENT

Chief Sponsor: Roger E. Barrus
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill provides for the appointment of legislative members to participate in multistate discussions involving agreements that encourage the development of domestic energy resources.

Highlighted Provisions:

This bill:

- provides for the appointment of legislators to discuss creating a multistate domestic energy development agreement;
- specifies the goals of an agreement;
- provides for a report on an energy producer states' agreement; and
- provides a repeal date.

Monies Appropriated in this Bill:

This bill appropriates:

- **to the Legislature for fiscal year 2011-12 only:**
  - **from the General Fund, $25,000.**

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-236, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

36-12-20, Utah Code Annotated 1953

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

Section 1. Section 36-12-20 is enacted to read:

36-12-20. Membership selection -- Agreements -- Goals -- Meetings -- Reports.

(1) The speaker of the House shall appoint two members and the president of the Senate shall appoint two members, of which no more than three of the four members shall be from the same political party, to study and work with legislative members of other energy producing states for the purpose of developing a proposed energy producer states' agreement.

(2) The proposed energy producer states' agreement shall have the following goals:

(a) to encourage domestic development of energy in the United States;

(b) to ensure the continued development of each state's domestic natural resources;

(c) to deliver a unified message to the federal government from energy producing states by:

(i) participating in the development of proposed federal legislation and regulations; and

(ii) making recommendations regarding existing federal law and regulations including the following:

(A) the Environmental Protection Act;

(B) the Endangered Species Act; and

(C) federal land access issues that affect the production of energy;

(d) to eliminate or reduce overly broad federal legislation; and

(e) to identify and address consequences of delays and cancellations of economically viable energy projects.

(3) Appointed members shall produce a report with recommendations regarding an energy producer states' agreement to the National Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee on or before October 1, 2011.

(4) Salaries and expenses of the appointed members may be paid in accordance with Section 36-2-2 and Legislative Rules, Title 5, Chapter 3, Expenses and Mileage Reimbursement for Authorized Legislative Meetings, Special Sessions, and Veto Override Sessions.

(5) The Office of Legislative Research and General Counsel shall provide staff assistance as requested.

Section 2. Section 63I-1-236 is amended to read:

63I-1-236. Repeal dates, Title 36.

(1) Section 36-12-20 is repealed June 30, 2012.

(2) Sections 36-26-101 through 36-26-104 are repealed December 31, 2017.

Section 3. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

Item 1 To Legislature - Senate	
From General Fund, One-time	$12,500
Schedule of Programs:	
Administration	$12,500
Item 2 To Legislature - House of Representatives	
From General Fund, One-time	$12,500
Schedule of Programs:	
Administration	$12,500

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon

approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 40
S. B. 14
Passed February 7, 2011
Approved March 16, 2011
Effective May 10, 2011

LOCAL ELECTION AMENDMENTS

Chief Sponsor: Peter C. Knudson
House Sponsor: Douglas Sagers

LONG TITLE

General Description:

This bill amends local election provisions and midterm vacancy provisions for municipalities, local districts, and special service districts.

Highlighted Provisions:

This bill:

- defines terms;
- amends local district elections provisions;
- amends midterm vacancy provisions for a special service district;
- in certain circumstances, authorizes a municipal legislative body or a local district board to cancel a local election if a candidate is unopposed;
- requires a municipal legislative body or a local district board to give notice of a cancelled local election;
- amends midterm vacancy provisions for a local district board;
- amends write-in candidate provisions for towns; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-1303, as last amended by Laws of Utah 2010, Chapter 279
17B-1-306, as last amended by Laws of Utah 2010, Chapter 197
17B-1-1001, as last amended by Laws of Utah 2010, Chapter 159
17D-1-106, as last amended by Laws of Utah 2009, Chapters 181 and 356
20A-1-102, as last amended by Laws of Utah 2010, Chapters 129, 197, and 254
20A-1-202, as last amended by Laws of Utah 2007, Chapter 329
20A-1-512, as last amended by Laws of Utah 2007, Chapter 329
20A-9-601, as last amended by Laws of Utah 2009, Chapter 202

ENACTS:

20A-1-206, Utah Code Annotated 1953

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

Section 1. Section 10-3-1303 is amended to read:

10-3-1303. Definitions.

As used in this part:

(1) "Appointed officer" means any person appointed to any statutory office or position or any other person appointed to any position of employment with a city or with a community development and renewal agency under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act. Appointed officers include, but are not limited to, persons serving on special, regular, or full-time committees, agencies, or boards whether or not such persons are compensated for their services. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the municipality.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.

(3) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(4) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(5) "Elected officer" means [~~any~~] a person:

(a) elected or appointed to the office of mayor, commissioner, or council member[~~.~~]; or

(b) who is considered to be elected to the office of mayor, commissioner, or council member by a municipal legislative body in accordance with Section 20A-1-206.

(6) "Improper disclosure" means disclosure of private, controlled, or protected information to any person who does not have both the right and the need to receive the information.

(7) "Municipal employee" means a person who is not an elected or appointed officer who is employed on a full or part-time basis by a municipality or by a community development and renewal agency under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act.

(8) "Private, controlled, or protected information" means information classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act or other applicable provision of law.

(9) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

Section 2. Section 17B-1-306 is amended to read:

17B-1-306. Local district board -- Election procedures.

(1) Except as provided in Subsection (11), each elected board member shall be selected as provided in this section.

(2) (a) Each election of a local district board member shall be held:

(i) at the same time as the municipal general election; and

(ii) at polling places designated by the county clerk in consultation with the local district for each county in which the local district is located, which polling places shall coincide with municipal general election polling places whenever feasible.

(b) (i) Subject to Subsections (4)(f) and (g), the number of polling places under Subsection (2)(a)(ii) in an election of board members of an irrigation district shall be one polling place per division of the district, designated by the district board.

(ii) Each polling place designated by an irrigation district board under Subsection (2)(b)(i) shall coincide with a polling place designated by the county clerk under Subsection (2)(a)(ii).

(3) (a) The clerk of each local district with a board member position to be filled at the next municipal general election shall provide notice of:

(i) each elective position of the local district to be filled at the next municipal general election;

(ii) the constitutional and statutory qualifications for each position; and

(iii) the dates and times for filing a declaration of candidacy.

(b) The notice required under Subsection (3)(a) shall be:

(i) posted in at least five public places within the local district at least 10 days before the first day for filing a declaration of candidacy; or

(ii) (A) published in a newspaper of general circulation within the local district at least three but no more than 10 days before the first day for filing a declaration of candidacy; and

(B) published, in accordance with Section 45-1-101, for 10 days before the first day for filing a declaration of candidacy.

(4) (a) To become a candidate for an elective local district board position, the prospective candidate shall file a declaration of candidacy in person with the local district, during office hours and not later than the close of normal office hours between July 1 and July 15 of any odd-numbered year.

(b) When July 15 is a Saturday, Sunday, or holiday, the filing time shall be extended until the close of normal office hours on the following regular business day.

(c) (i) Before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether or not the candidate meets those requirements.

(ii) If the prospective candidate does not meet the qualification requirements for the office, the filing officer may not accept the declaration of candidacy.

(iii) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall accept the declaration of candidacy.

(d) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) _____, being first duly sworn, say that I reside at (Street) _____, City of _____, County of _____, State of Utah, (Zip Code) _____, (Telephone Number, if any)_____; that I meet the qualifications for the office of board of trustees member for _____ (state the name of the local district); that I am a candidate for that office to be voted upon at the next election, and I hereby request that my name be printed upon the official ballot for that election.

(Signed)

_____

Subscribed and sworn to (or affirmed) before me by _____ on this _____ day of _____, ____.

(Signed) _____

(Clerk or Notary Public)"

(e) Each person wishing to become a valid write-in candidate for an elective local district board position is governed by Section 20A-9-601.

(f) If at least one person does not file a declaration of candidacy as required by this section, a person shall be appointed to fill that board position by following the procedures and requirements for appointment established in Section 20A-1-512.

(g) If only one candidate files a declaration of candidacy and there is no write-in candidate who complies with Section 20A-9-601, the board [~~need not hold an election for that position and may appoint the candidate to the board.~~], in accordance with Section 20A-1-206, may:

(i) consider the candidate to be elected to the position; and

(ii) cancel the election.

(5) (a) A primary election may be held if:

(i) the election is authorized by the local district board; and

(ii) the number of candidates for a particular local board position or office exceeds twice the number of persons needed to fill that position or office.

(b) The primary election shall be conducted:

(i) on the same date as the municipal primary election, as provided for in Section 20A-1-201.5; and

(ii) according to the procedures for municipal primary elections provided under Title 20A, Election Code.

(6) (a) Except as provided in Subsection (6)(c), the local district clerk shall certify the candidate names to the clerk of each county in which the local district is located no later than August 20 of the municipal election year.

(b) (i) Except as provided in Subsection (6)(c), the clerk of each county in which the local district is located shall coordinate the placement of the name of each candidate for local district office in the nonpartisan section of the municipal general election ballot with the municipal election clerk.

(ii) If consolidation of the local district election ballot with the municipal general election ballot is not feasible, the county clerk shall provide for a separate local district election ballot to be administered by poll workers at polling locations designated under Subsection (2).

(c) (i) Subsections (6)(a) and (b) do not apply to an election of a member of the board of an irrigation district established under Chapter 2a, Part 5, Irrigation District Act.

(ii) (A) Subject to Subsection (6)(c)(ii)(B), the board of each irrigation district shall prescribe the form of the ballot for each board member election.

(B) Each ballot for an election of an irrigation district board member shall be in a nonpartisan format.

(7) (a) Each voter at an election for a board of trustees member of a local district shall:

(i) be a registered voter within the district, except for an election of:

(A) an irrigation district board of trustees member; or

(B) a basic local district board of trustees member who is elected by property owners; and

(ii) meet the requirements to vote established by the district.

(b) Each voter may vote for as many candidates as there are offices to be filled.

(c) The candidates who receive the highest number of votes are elected.

(8) Except as otherwise provided by this section, the election of local district board members is governed by Title 20A, Election Code.

(9) (a) A person elected to serve on a local district board shall serve a four-year term, beginning at noon on the January 1 after the person's election.

(b) A person elected shall be sworn in as soon as practical after January 1.

(10) (a) Except as provided in Subsection (10)(b), each local district shall reimburse the county or municipality holding an election under this section for the costs of the election attributable to that local district.

(b) Each irrigation district shall bear its own costs of each election it holds under this section.

(11) This section does not apply to an improvement district that provides electric or gas service.

(12) The provisions of Title 20A, Chapter 3, Part 6, Early Voting, do not apply to an election under this section.

Section 3. Section 17B-1-1001 is amended to read:

17B-1-1001. Provisions applicable to property tax levy.

(1) Each local district that levies and collects property taxes shall levy and collect them according to the provisions of Title 59, Chapter 2, Property Tax Act.

(2) As used in this section, "elected official" means a local district board of trustees member who:

(a) is elected to the board of trustees by local district voters at an election held for that purpose, including a member elected under Subsection (4);

(b) holds, at the time of appointment to the board of trustees, an elected position with a municipality, county, or another local district that is partially or completely included within the boundaries of the local district; [~~or~~]

(c) is appointed in accordance with Subsection 17B-1-303(5) or 17B-1-306(4)(f) [~~or (g).~~]; or

(d) is considered to be elected in accordance with Subsection 17B-1-306(4)(g).

(3) (a) Except as provided in Subsection (3)(b), a local district may not levy or collect property tax revenue that exceeds the certified tax rate during a taxable year that begins on or after January 1, 2011.

(b) Notwithstanding Subsection (3)(a), a local district may levy or collect property tax revenue that exceeds the certified tax rate during a taxable year that begins on or after January 1, 2011, if:

(i) and to the extent that the revenue from the property tax was pledged before January 1, 2011, to pay for bonds or other obligations of the local district;

(ii) the members of the board of trustees are all elected officials;

(iii) the majority of the board of trustees are elected officials; or

(iv) the proposed tax or increase in the property tax rate has been approved by:

(A) a majority of the registered voters within the local district at an election held for that purpose;

(B) the legislative body of the appointing authority; or

(C) the legislative body of:

(I) a majority of the municipalities partially or completely included within the boundary of the specified local district; or

(II) the county in which the specified local district is located, if the county has some or all of its unincorporated area included within the boundary of the specified local district.

(4) (a) Notwithstanding provisions to the contrary in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts, and for purposes of Subsection (3)(b), members of the board of trustees of a local district shall be elected, if, subject to Subsection (4)(b):

(i) two-thirds of all members of the board of trustees of the local district vote in favor of changing to an elected board; and

(ii) the legislative body of each municipality or county that appoints a member to the board of trustees adopts a resolution approving the change to an elected board.

(b) A change to an elected board of trustees under Subsection (4)(a) may not shorten the term of any member of the board of trustees serving at the time of the change.

(5) Subsections (2), (3), and (4) do not apply to:

(a) Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

(b) Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; or

(c) a local district in which:

(i) the board of trustees consists solely of:

(A) land owners or the land owners' agents; or

(B) as described in Subsection 17B-1-302(1)(c), land owners or the land owners' agents or officers; and

(ii) there are no residents within the local district at the time a property tax is levied.

Section 4. Section 17D-1-106 is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, and 17B-1-118;

(b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, and 17B-1-313;

(c) Section 20A-1-512;

[~~(c)~~] (d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

[~~(d)~~] (e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

[~~(e)~~] (f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

[~~(f)~~] (g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

Section 5. Section 20A-1-102 is amended to read:

20A-1-102. Definitions.

As used in this title:

(1) "Active voter" means a registered voter who has not been classified as an inactive voter by the county clerk.

(2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot sheets and tabulates the results.

(3) (a) "Ballot" means the storage medium, whether paper, mechanical, or electronic, upon which a voter records the voter's votes.

(b) "Ballot" includes ballot sheets, paper ballots, electronic ballots, and secrecy envelopes.

(4) "Ballot sheet":

(a) means a ballot that:

(i) consists of paper or a card where the voter's votes are marked or recorded; and

(ii) can be counted using automatic tabulating equipment; and

(b) includes punch card ballots and other ballots that are machine-countable.

(5) "Ballot label" means the cards, papers, booklet, pages, or other materials that:

(a) contain the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) are used in conjunction with ballot sheets that do not display that information.

(6) "Ballot proposition" means a question, issue, or proposal that is submitted to voters on the ballot for their approval or rejection including:

(a) an opinion question specifically authorized by the Legislature;

(b) a constitutional amendment;

(c) an initiative;

(d) a referendum;

(e) a bond proposition;

(f) a judicial retention question; or

(g) any other ballot question specifically authorized by the Legislature.

(7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(8) "Bond election" means an election held for the purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(12) "Canvassing judge" means a poll worker designated to assist in counting ballots at the canvass.

(13) "Convention" means the political party convention at which party officers and delegates are selected.

(14) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(15) "Counting judge" means a poll worker designated to count the ballots during election day.

(16) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(17) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the poll workers and counting judges to count ballots during election day.

(18) "County officers" means those county officers that are required by law to be elected.

(19) "Date of the election" or "election day" or "day of the election":

(a) means the day that is specified in the calendar year as the day that the election occurs; and

(b) does not include:

(i) deadlines established for absentee voting; or

(ii) any early voting or early voting period as provided under Chapter 3, Part 6, Early Voting.

(20) "Elected official" means:

(a) a person elected to an office under Section 20A-1-303;

(b) a person who is considered to be elected to a municipal office in accordance with Subsection 20A-1-206(1)(c)(ii); or

(c) a person who is considered to be elected to a local district office in accordance with Subsection 20A-1-206(3)(c)(ii).

[~~(20)~~] (21) "Election" means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, and a local district election.

[~~(21)~~] (22) "Election Assistance Commission" means the commission established by Public Law 107-252, the Help America Vote Act of 2002.

[~~(22)~~] (23) "Election cycle" means the period beginning on the first day persons are eligible to file declarations of candidacy and ending when the canvass is completed.

[~~(23)~~] (24) "Election judge" means a poll worker that is assigned to:

(a) preside over other poll workers at a polling place;

(b) act as the presiding election judge; or

(c) serve as a canvassing judge, counting judge, or receiving judge.

[~~(24)~~] (25) "Election officer" means:

(a) the lieutenant governor, for all statewide ballots;

(b) the county clerk or clerks for all county ballots and for certain ballots and elections as provided in Section 20A-5-400.5;

(c) the municipal clerk for all municipal ballots and for certain ballots and elections as provided in Section 20A-5-400.5;

(d) the local district clerk or chief executive officer for certain ballots and elections as provided in Section 20A-5-400.5; and

(e) the business administrator or superintendent of a school district for certain ballots or elections as provided in Section 20A-5-400.5.

[~~(25)~~] (26) "Election official" means any election officer, election judge, or poll worker.

[~~(26)~~] (27) "Election results" means, for bond elections, the count of those votes cast for and against the bond proposition plus any or all of the election returns that the board of canvassers may request.

[~~(27)~~] (28) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

[~~(28)~~] (29) "Electronic ballot" means a ballot that is recorded using a direct electronic voting device or other voting device that records and stores ballot information by electronic means.

[~~(29)~~] (30) (a) "Electronic voting device" means a voting device that uses electronic ballots.

(b) "Electronic voting device" includes a direct recording electronic voting device.

[~~(30)~~] (31) "Inactive voter" means a registered voter who has:

(a) been sent the notice required by Section 20A-2-306; and

(b) failed to respond to that notice.

[~~(31)~~] (32) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

[~~(32)~~] (33) "Judicial office" means the office filled by any judicial officer.

[~~(33)~~] (34) "Judicial officer" means any justice or judge of a court of record or any county court judge.

[~~(34)~~] (35) "Local district" means a local government entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.

[~~(35)~~] (36) "Local district officers" means those local district officers that are required by law to be elected.

[~~(36)~~] (37) "Local election" means a regular municipal election, a local special election, a local district election, and a bond election.

[~~(37)~~] (38) "Local political subdivision" means a county, a municipality, a local district, or a local school district.

[~~(38)~~] (39) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

[~~(39)~~] (40) "Municipal executive" means:

(a) the mayor in the council-mayor form of government defined in Section 10-3b-102; or

(b) the mayor in the council-manager form of government defined in Subsection 10-3b-103(6).

[~~(40)~~] (41) "Municipal general election" means the election held in municipalities and local districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

[~~(41)~~] (42) "Municipal legislative body" means the council of the city or town in any form of municipal government.

(43) "Municipal office" means an elective office in a municipality.

[~~(42)~~] (44) "Municipal officers" means those municipal officers that are required by law to be elected.

[~~(43)~~] (45) "Municipal primary election" means an election held to nominate candidates for municipal office.

[~~(44)~~] (46) "Official ballot" means the ballots distributed by the election officer to the poll workers to be given to voters to record their votes.

[~~(45)~~] (47) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) the facsimile signature of the election officer; and

(b) the information on the ballot stub that identifies:

(i) the poll worker's initials; and

(ii) the ballot number.

[~~(46)~~] (48) "Official register" means the official record furnished to election officials by the election officer that contains the information required by Section 20A-5-401.

[~~(47)~~] (49) "Paper ballot" means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record the voter's vote for each office and for or against each ballot proposition.

[~~(48)~~] (50) "Political party" means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Chapter 8, Political Party Formation and Procedures.

[~~(49)~~] (51) (a) "Poll worker" means a person assigned by an election official to assist with an election, voting, or counting votes.

(b) "Poll worker" includes election judges.

(c) "Poll worker" does not include a watcher.

[~~(50)~~] (52) "Pollbook" means a record of the names of voters in the order that they appear to cast votes.

[~~(51)~~] (53) "Polling place" means the building where voting is conducted.

[~~(52)~~] (54) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks the voter's choice.

[~~(53)~~] (55) "Provisional ballot" means a ballot voted provisionally by a person:

(a) whose name is not listed on the official register at the polling place;

(b) whose legal right to vote is challenged as provided in this title; or

(c) whose identity was not sufficiently established by a poll worker.

[~~(54)~~] (56) "Provisional ballot envelope" means an envelope printed in the form required by Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify a person's legal right to vote.

[~~(55)~~] (57) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

[~~(56)~~] (58) "Protective counter" means a separate counter, which cannot be reset, that:

(a) is built into a voting machine; and

(b) records the total number of movements of the operating lever.

[~~(57)~~] (59) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

[~~(58)~~] (60) "Receiving judge" means the poll worker that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

[~~(59)~~] (61) "Registration form" means a book voter registration form and a by-mail voter registration form.

[~~(60)~~] (62) "Regular ballot" means a ballot that is not a provisional ballot.

[~~(61)~~] (63) "Regular general election" means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

[~~(62)~~] (64) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, to nominate candidates of political parties and nonpolitical groups to advance to the regular general election.

[~~(63)~~] (65) "Resident" means a person who resides within a specific voting precinct in Utah.

[~~(64)~~] (66) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

[~~(65)~~] (67) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

[~~(66)~~] (68) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after the voter has voted it in order to preserve the secrecy of the voter's vote.

[~~(67)~~] (69) "Special election" means an election held as authorized by Section 20A-1-204.

[~~(68)~~] (70) "Spoiled ballot" means each ballot that:

(a) is spoiled by the voter;

(b) is unable to be voted because it was spoiled by the printer or a poll worker; or

(c) lacks the official endorsement.

[~~(69)~~] (71) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

[~~(70)~~] (72) "Stub" means the detachable part of each ballot.

[~~(71)~~] (73) "Substitute ballots" means replacement ballots provided by an election officer to the poll workers when the official ballots are lost or stolen.

[~~(72)~~] (74) "Ticket" means each list of candidates for each political party or for each group of petitioners.

[~~(73)~~] (75) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

[~~(74)~~] (76) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

[~~(75)~~] (77) "Valid voter identification" means:

(a) a form of identification that bears the name and photograph of the voter which may include:

(i) a currently valid Utah driver license;

(ii) a currently valid identification card that is issued by:

(A) the state; or

(B) a branch, department, or agency of the United States;

(iii) a currently valid Utah permit to carry a concealed weapon;

(iv) a currently valid United States passport; or

(v) a currently valid United States military identification card;

(b) one of the following identification cards, whether or not the card includes a photograph of the voter:

(i) a valid tribal identification card;

(ii) a Bureau of Indian Affairs card; or

(iii) a tribal treaty card; or

(c) two forms of identification not listed under Subsection [~~(75)~~] (77)(a) or (b) but that bear the name of the voter and provide evidence that the voter resides in the voting precinct, which may include:

(i) a current utility bill or a legible copy thereof, dated within the 90 days before the election;

(ii) a bank or other financial account statement, or a legible copy thereof;

(iii) a certified birth certificate;

(iv) a valid Social Security card;

(v) a check issued by the state or the federal government or a legible copy thereof;

(vi) a paycheck from the voter's employer, or a legible copy thereof;

(vii) a currently valid Utah hunting or fishing license;

(viii) certified naturalization documentation;

(ix) a currently valid license issued by an authorized agency of the United States;

(x) a certified copy of court records showing the voter's adoption or name change;

(xi) a valid Medicaid card, Medicare card, or Electronic Benefits Transfer Card;

(xii) a currently valid identification card issued by:

(A) a local government within the state;

(B) an employer for an employee; or

(C) a college, university, technical school, or professional school located within the state; or

(xiii) a current Utah vehicle registration.

[~~(76)~~] (78) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

[~~(77)~~] (79) "Voter" means a person who:

(a) meets the requirements for voting in an election;

(b) meets the requirements of election registration;

(c) is registered to vote; and

(d) is listed in the official register book.

[~~(78)~~] (80) "Voter registration deadline" means the registration deadline provided in Section 20A-2-102.5.

[~~(79)~~] (81) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

[~~(80)~~] (82) "Voting booth" means:

(a) the space or compartment within a polling place that is provided for the preparation of ballots, including the voting machine enclosure or curtain; or

(b) a voting device that is free standing.

[~~(81)~~] (83) "Voting device" means:

(a) an apparatus in which ballot sheets are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance;

(c) an electronic voting device or other device used to make selections and cast a ballot electronically, or any component thereof;

(d) an automated voting system under Section 20A-5-302; or

(e) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

[~~(82)~~] (84) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

[~~(83)~~] (85) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

[~~(84)~~] (86) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

[~~(85)~~] (87) "Watcher" means a voting poll watcher, a counting poll watcher, an inspecting poll watcher, and a testing watcher.

[~~(86)~~] (88) "Western States Presidential Primary" means the election established in Title 20A, Chapter 9, Part 8.

[~~(87)~~] (89) "Write-in ballot" means a ballot containing any write-in votes.

[~~(88)~~] (90) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 6. Section 20A-1-202 is amended to read:

20A-1-202. Date and purpose of municipal general election.

(1) [~~A~~] Except as provided in Section 20A-1-206, a municipal general election shall be held in municipalities and local districts on the first Tuesday after the first Monday in November of each odd-numbered year.

(2) At the municipal general election, the voters shall:

(a) (i) choose persons to serve as municipal officers; and

(ii) choose persons to serve as local district officers; and

(b) approve or reject:

(i) any proposed initiatives or referenda that have qualified for the ballot as provided by law; and

(ii) any other ballot propositions submitted to the voters that are authorized by the Utah Code.

Section 7. Section 20A-1-206 is enacted to read:

20A-1-206. Cancellation of local election -- Municipalities -- Local districts -- Notice.

(1) A municipal legislative body may cancel a local election if:

(a) (i) (A) all municipal officers are elected in an at-large election under Subsection 10-3-205.5(1); and

(B) the number of municipal officer candidates, including any eligible write-in candidates under Section 20A-9-601, for the at-large municipal offices does not exceed the number of open at-large municipal offices for which the candidates have filed; or

(ii) (A) the municipality has adopted an ordinance under Subsection 10-3-205.5(2);

(B) the number of municipal officer candidates, including any eligible write-in candidates under Section 20A-9-601, for the at-large municipal offices, if any, does not exceed the number of open at-large municipal offices for which the candidates have filed; and

(C) each municipal officer candidate, including any eligible write-in candidates under Section 20A-9-601, in each district is unopposed;

(b) there are no other municipal ballot propositions; and

(c) the municipal legislative body passes, no later than 20 days before the day of the scheduled election, a resolution that cancels the election and certifies that:

(i) each municipal officer candidate is:

(A) unopposed; or

(B) a candidate for an at-large municipal office for which the number of candidates does not exceed the number of open at-large municipal offices; and

(ii) a candidate described in Subsection (1)(c)(i) is considered to be elected to office.

(2) A municipal legislative body that cancels a local election in accordance with Subsection (1) shall give notice that the election is cancelled by posting notice:

(a) subject to Subsection (5), on the Statewide Electronic Voter Information Website as described in Section 20A-7-801 for 15 consecutive days before the day of the scheduled election;

(b) if the municipality has a public website, on the municipality's public website for 15 days before the day of the scheduled election;

(c) if the municipality publishes a newsletter or other periodical, in the next scheduled newsletter or other periodical published before the day of the scheduled election; and

(d) (i) at least twice in a newspaper of general circulation within the municipality before the day of the scheduled election; or

(ii) if there is no newspaper of general circulation within the municipality, in at least three conspicuous places within the boundaries of the municipality at least 10 days before the day of the scheduled election.

(3) A local district board may cancel an election as described in Section 17B-1-306 if:

(a) (i) (A) any local district officers are elected in an at-large election; and

(B) the number of local district officer candidates for the at-large local district offices, including any eligible write-in candidates under Section 20A-9-601, does not exceed the number of open at-large local district offices for which the candidates have filed; or

(ii) (A) the local district has divided the local district into divisions under Section 17B-1-306.5;

(B) the number of local district officer candidates, including any eligible write-in candidates under Section 20A-9-601, for the at-large local district offices within the local district, if any, does not exceed the number of open at-large local district offices for which the candidates have filed; and

(C) each local district officer candidate, including any eligible write-in candidates under Section 20A-9-601, in each division of the local district is unopposed;

(b) there are no other local district ballot propositions; and

(c) the local district board of trustees, no later than 20 days before the day of the scheduled election, adopts a resolution that cancels the election and certifies that:

(i) each local district officer candidate is:

(A) unopposed; or

(B) a candidate for an at-large local district office for which the number of candidates does not exceed the number of open at-large local district offices; and

(ii) a candidate described in Subsection (3)(c)(i) is considered to be elected to office.

(4) A local district that cancels a local election in accordance with Subsection (3) shall give notice that the election is cancelled by posting notice:

(a) subject to Subsection (5), on the Statewide Electronic Voter Information Website as described in Section 20A-7-801 for 15 consecutive days before the day of the scheduled election;

(b) if the local district has a public website, on the local district's public website for 15 days before the day of the scheduled election;

(c) if the local district publishes a newsletter or other periodical, in the next scheduled newsletter or other periodical published before the day of the scheduled election; and

(d) (i) at least twice in a newspaper of general circulation within the local district before the day of the scheduled election; or

(ii) if there is no newspaper of general circulation within the local district, in at least three conspicuous places within the boundaries of the local district at least 10 days before the day of the scheduled election.

(5) A municipal legislative body that posts a notice in accordance with Subsection (2)(a) or a local district that posts a notice in accordance with Subsection (4)(a) is not liable for a notice that fails to post due to technical or other error by the publisher of the Statewide Electronic Voter Information Website.

Section 8. Section 20A-1-512 is amended to read:

20A-1-512. Midterm vacancies on local district boards.

(1) (a) Whenever a vacancy occurs on any local district board for any reason, a replacement to serve out the unexpired term shall be appointed as provided in this section by:

(i) the local district board, if the person vacating the position was elected; or

(ii) the appointing authority, as defined in Section 17B-1-102, if the person vacating the position was appointed.

(b) Before acting to fill the vacancy, the local district board or appointing authority shall:

(i) give public notice of the vacancy at least two weeks before the local district board or appointing authority meets to fill the vacancy; and

(ii) identify, in the notice:

(A) the date, time, and place of the meeting where the vacancy will be filled; and

(B) the person to whom a person interested in being appointed to fill the vacancy may submit his name for consideration and any deadline for submitting it.

(2) If the local district board fails to appoint a person to complete an elected board member's term within 90 days, the legislative body of the county or municipality that created the local district shall fill the vacancy following the procedure set forth for a local district in Subsection (1)(b).

Section 9. Section 20A-9-601 is amended to read:

20A-9-601. Qualifying as a write-in candidate.

(1) (a) Each person wishing to become a valid write-in candidate shall file a declaration of candidacy in person or through a designated agent for a candidate for President or Vice President of the United States with the appropriate filing officer not later than 30 days before the regular general election or 45 days before a municipal general election in which the person intends to be a write-in candidate.

(b) (i) The filing officer shall:

(A) read to the candidate the constitutional and statutory requirements for the office; and

(B) ask the candidate whether or not the candidate meets the requirements.

(ii) If the candidate cannot meet the requirements of office, the filing officer may not accept the write-in candidate's declaration of candidacy.

[~~(2) A write-in candidate in towns need not prequalify with the filing officer.~~]

[~~(3)~~] (2) By November 1 of each regular general election year, the lieutenant governor shall certify to each county clerk the names of all write-in candidates who filed their declaration of candidacy with the lieutenant governor.

CHAPTER 41
S. B. 49
Passed February 16, 2011
Approved March 16, 2011
Effective May 10, 2011

OVERSIGHT OF BONDING BY COUNTIES

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends a county legislative body's authority to create a board of directors for certain types of facilities and the board's authority.

Highlighted Provisions:

This bill:

- amends a county legislative body's authority to create a board of directors for certain types of facilities;
- amends the board's authority; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-12-4, as last amended by Laws of Utah 1993, Chapter 227

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

Section 1. Section 17-12-4 is amended to read:

17-12-4. Bond issue for auditoriums, etc., and "convention complex" facilities -- Board of directors -- Use of revenues from facilities -- Rights of bondholders.

[~~Any~~] (1) (a) A county legislative body adopting proceedings authorizing the issuance of county bonds for the purpose of acquiring, improving, extending, furnishing, and equipping auditoriums, sports arenas, stadiums, convention centers, and all properties and facilities ordinarily forming part of a so-called "convention complex," or for any part or combination of the foregoing[~~, shall in the proceedings authorizing such bonds: (1) Provide~~] may, by resolution, provide for the creation of a board of directors which, so long as any of the bonds remain outstanding either in original or refunded form[~~, shall~~] may:

(i) have complete management and control of the facilities acquired with the proceeds of the bonds[~~. Such board~~]; or

(ii) act as an advisory board to the county executive and legislative body regarding the management and operation of a property or facility described in Subsection (1)(a).

(b) (i) The board of directors described in Subsection (1)(a) shall have the number of members, possessing such qualifications and selected for such terms, and shall operate pursuant to such rules and regulations as [~~may be provided in such proceedings.~~] adopted by the county legislative body.

(ii) The members of [~~such board~~] the board of directors described in Subsection (1)(a) shall serve without compensation except for reimbursement of expenses actually incurred in the performance of their duties.

(iii) After the appointment and organization of [~~any~~] the board of directors, all vacancies thereafter occurring, whether by expiration of term or otherwise, shall be filled by majority vote of the remaining members of the board. [~~Subject to the provisions of such proceedings,~~]

(iv) Subject to provisions adopted by the county legislative body, the members of the board of directors [~~shall~~] may have the powers and duties ordinarily enjoyed by the directors of a private corporation operating similar facilities.

(2) [~~Provide~~] A county legislative body that adopts proceedings for the purpose of and as described in Subsection (1)(a) shall provide that all revenues of every nature derived from the operation of the facilities so acquired with bond proceeds and not expended in the reasonable and proper costs of maintaining and operating the facilities, including the making of necessary repairs and replacements, be pledged to and utilized for the payment of principal of and interest on the bonds and, if so provided, the creation of a reserve for such purpose.

(3) This act is adopted for the purpose of eliminating or reducing so far as possible the ad valorem taxes necessary to be levied for the payment of such bonds and for the purpose of improving the security of such bonds, and accordingly the holders of the bonds from time to time shall have a vested and enforceable contract right in the provisions of this act and in the provisions of the bond proceedings adopted pursuant hereto.

CHAPTER 42
S. B. 66
Passed March 4, 2011
Approved March 16, 2011
Effective March 16, 2011

MILITARY LEAVE FOR AN ELECTED OFFICIAL OF A POLITICAL SUBDIVISION

Chief Sponsor: John L. Valentine
House Sponsor: Christopher N. Herrod
Cosponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends Title 20A, Election Code, to authorize an elected official of a political subdivision to take military leave.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes an elected official of a political subdivision to take military leave;
- authorizes the governing body to:
  - appoint a temporary replacement for an elected official who takes military leave;
  - establish the distribution of the emoluments of the office between the elected official and the temporary replacement; and
  - establish an application process; and
- **makes technical changes.**

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

ENACTS:

20A-1-513, Utah Code Annotated 1953

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

Section 1. Section 20A-1-513 is enacted to read:

Part 5. Candidate Vacancy and Vacancy and Temporary Absence in Elected Office

20A-1-513. Temporary absence in elected office of a political subdivision for military service.

(1) As used in this section:

(a) "Armed forces" means:

(i) the Army of the United States;

(ii) the United States Navy;

(iii) the United States Air Force;

(iv) the Marine Corps;

(v) the Coast Guard;

(vi) the National Guard; or

(vii) a reserve or auxiliary of an entity listed in Subsections (1)(a)(i) through (vi).

(b) (i) "Elected official" is a person who holds an office of a political subdivision that is required by law to be filled by an election.

(ii) "Elected official" includes a person who is appointed to fill a vacancy in an office described in Subsection (1)(b)(i).

(c) (i) "Military leave" means the temporary absence from an office:

(A) by an elected official called to active, full-time duty in the armed forces; and

(B) for a period of time that exceeds 30 days and does not exceed 400 days.

(ii) "Military leave" includes the time a person described in Subsection (1)(c)(i) spends for:

(A) out processing;

(B) an administrative delay;

(C) accrued leave; and

(D) on rest and recuperation leave program of the armed forces.

(d) "Political subdivision's governing body" means:

(i) for a county, city, or town, the legislative body of the county, city, or town;

(ii) for a local district, the board of trustees of the local district;

(iii) for a local school district, the local school board;

(iv) for a special service district:

(A) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

(B) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and

(v) for a political subdivision not listed in Subsections (1)(d)(i) through (iv), the body that governs the affairs of the political subdivision.

(e) "Temporary replacement" means the person appointed by the political subdivision's governing body in accordance with this section to exercise the powers and duties of the office of the elected official who takes military leave.

(2) Except as provided by Subsection (8), an elected official creates a vacancy in the elected official's office if the elected official is called to active, full-time duty in the armed forces unless the elected official takes military leave as provided by this section.

(3) Except as provided by Subsection (8), an elected official may take military leave if the elected official submits to the political subdivision's governing body written notice of the intent to take military leave and the expected duration of the military leave, by the later of:

(a) 21 days before the military leave begins; or

(b) the next business day after which the elected official receives an order from the armed forces calling the elected official to active, full-time duty.

(4) An elected official's military leave:

(a) begins the day on which the elected official begins active, full-time duty in the armed forces; and

(b) ends the sooner of:

(i) the expiration of the elected official's term of office; or

(ii) the day on which the elected official ends active, full-time duty in the armed forces.

(5) A temporary replacement shall:

(a) meet the qualifications required to hold the office; and

(b) be appointed:

(i) before the day on which the military leave begins; and

(ii) (A) in the same manner as provided by this part for a midterm vacancy if a registered political party nominated the elected official who takes military leave as a candidate for the office; or

(B) by the political subdivision's governing body after submitting an application in accordance with Subsection (7)(b) if a registered political party did not nominate the elected official who takes military leave as a candidate for office.

(6) (a) A temporary replacement shall exercise the powers and duties of the office for which the temporary replacement is appointed for the duration of the elected official's military leave.

(b) An elected official may not exercise the powers or duties of the office while on military leave.

(c) If a temporary replacement is not appointed before the day on which the military leave begins as required by Subsection (5)(b)(i), no person may exercise the powers and duties of the elected official's office during the elected official's military leave.

(7) The political subdivision's governing body shall establish:

(a) the distribution of the emoluments of the office between the elected official and the temporary replacement; and

(b) an application form and the date by which a person shall submit the application to be considered by the political subdivision's governing body for appointment as a temporary replacement.

(8) An elected official who is called to active, full-time duty in the armed forces before the effective date of this bill is on military leave.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 3. Revisor instructions.

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the references in Subsection 20A-1-513(8) from "the effective date of this bill" with the bill's actual effective date.

CHAPTER 43
S. B. 70
Passed March 8, 2011
Approved March 16, 2011
Effective May 10, 2011

COMMUNITY DEVELOPMENT AND RENEWAL AGENCIES AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill amends provisions of the Community Development and Renewal Agencies Act.

Highlighted Provisions:

This bill:

- defines terms;
- amends taxing entity committee provisions;
- amends tax increment and sales tax use provisions;
- amends agency report provisions;
- amends urban renewal project area budget provisions;
- authorizes an agency to approve an urban renewal project area budget extension;
- amends provisions authorizing an agency board to make a finding of blight;
- enacts provisions related to a railroad crossing within an urban renewal project area;
- amends economic development project area budget provisions;
- authorizes an agency to approve an economic development project area budget extension;
- amends community development project area budget provisions; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17C-1-102, as last amended by Laws of Utah 2010, Chapter 279
17C-1-204, as last amended by Laws of Utah 2009, Chapter 387
17C-1-401, as last amended by Laws of Utah 2010, Chapter 279
17C-1-402, as last amended by Laws of Utah 2009, Chapter 387
17C-1-409, as last amended by Laws of Utah 2010, Chapter 279
17C-1-603, as renumbered and amended by Laws of Utah 2006, Chapter 359
17C-2-206, as last amended by Laws of Utah 2010, Chapter 279
17C-2-303, as last amended by Laws of Utah 2008, Chapter 125
17C-3-205, as last amended by Laws of Utah 2010, Chapter 279
17C-4-204, as enacted by Laws of Utah 2006, Chapter 359

ENACTS:

17C-2-207, Utah Code Annotated 1953
17C-2-701, Utah Code Annotated 1953
17C-3-206, Utah Code Annotated 1953

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

Section 1. Section 17C-1-102 is amended to read:

17C-1-102. Definitions.

As used in this title:

(1) "Adjusted tax increment" means:

(a) for tax increment under a pre-July 1, 1993, project area plan, tax increment under Section 17C-1-403, excluding tax increment under Subsection 17C-1-403(3); and

(b) for tax increment under a post-June 30, 1993, project area plan, tax increment under Section 17C-1-404, excluding tax increment under Section 17C-1-406.

(2) "Affordable housing" means housing to be owned or occupied by persons and families of low or moderate income, as determined by resolution of the agency.

(3) "Agency" or "community development and renewal agency" means a separate body corporate and politic, created under Section 17C-1-201 or as a redevelopment agency under previous law, that is a political subdivision of the state, that is created to undertake or promote urban renewal, economic development, or community development, or any combination of them, as provided in this title, and whose geographic boundaries are coterminous with:

(a) for an agency created by a county, the unincorporated area of the county; and

(b) for an agency created by a city or town, the boundaries of the city or town.

(4) "Annual income" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 C.F.R. Sec. 5.609, as amended or as superseded by replacement regulations.

(5) "Assessment roll" has the meaning as defined in Section 59-2-102.

(6) "Base taxable value" means:

(a) for an urban renewal or economic development project area, the taxable value of the property within a project area from which tax increment will be collected, as shown upon the assessment roll last equalized before:

(i) for a pre-July 1, 1993, project area plan, the effective date of the project area plan;

(ii) for a post-June 30, 1993, project area plan:

(A) the date of the taxing entity committee's approval of the first project area budget; or

(B) if no taxing entity committee approval is required for the project area budget, the later of:

(I) the date the project area plan is adopted by the community legislative body; and

(II) the date the agency adopts the first project area budget;

(iii) for a project on an inactive industrial site, a year after the date on which the inactive industrial site is sold for remediation and development; or

(iv) for a project on an inactive airport site, a year after the later of:

(A) the date on which the inactive airport site is sold for remediation and development; and

(B) the date on which the airport that had been operated on the inactive airport site ceased operations; and

(b) for a community development project area, the agreed value specified in a resolution or interlocal agreement under Subsection 17C-4-201(2).

(7) "Basic levy" means the portion of a school district's tax levy constituting the minimum basic levy under Section 59-2-902.

(8) "Blight" or "blighted" means the condition of an area that meets the requirements of Subsection 17C-2-303(1).

(9) "Blight hearing" means a public hearing under Subsection 17C-2-102(1)(a)(i)(C) and Section 17C-2-302 regarding the existence or nonexistence of blight within the proposed urban renewal project area.

(10) "Blight study" means a study to determine the existence or nonexistence of blight within a survey area as provided in Section 17C-2-301.

(11) "Board" means the governing body of an agency, as provided in Section 17C-1-203.

(12) "Budget hearing" means the public hearing on a draft project area budget required under Subsection 17C-2-201(2)(d) for an urban renewal project area budget or Subsection 17C-3-201(2)(d) for an economic development project area budget.

(13) "Closed military base" means land within a former military base that the Defense Base Closure and Realignment Commission has voted to close or realign when that action has been sustained by the President of the United States and Congress.

[~~(13)~~] (14) "Combined incremental value" means the combined total of all incremental values from all urban renewal project areas, except project areas that contain some or all of a military installation or inactive industrial site, within the agency's boundaries under adopted project area plans and adopted project area budgets at the time that a project area budget for a new urban renewal project area is being considered.

[~~(14)~~] (15) "Community" means a county, city, or town.

[~~(15)~~] (16) "Community development" means development activities within a community, including the encouragement, promotion, or provision of development.

[~~(16)~~] (17) "Economic development" means to promote the creation or retention of public or private jobs within the state through:

(a) planning, design, development, construction, rehabilitation, business relocation, or any combination of these, within a community; and

(b) the provision of office, industrial, manufacturing, warehousing, distribution, parking, public, or other facilities, or other improvements that benefit the state or a community.

[~~(17)~~] (18) "Fair share ratio" means the ratio derived by:

(a) for a city or town, comparing the percentage of all housing units within the city or town that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units; or

(b) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

[~~(18)~~] (19) "Family" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 C.F.R. Section 5.403, as amended or as superseded by replacement regulations.

[~~(19)~~] (20) "Greenfield" means land not developed beyond agricultural or forestry use.

[~~(20)~~] (21) "Hazardous waste" means any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment, under state or federal law or regulation.

[~~(21)~~] (22) "Housing funds" means the funds allocated in an urban renewal project area budget under Section 17C-2-203 for the purposes provided in Subsection 17C-1-412(1).

[~~(22)~~] (23) (a) "Inactive airport site" means land that:

(i) consists of at least 100 acres;

(ii) is occupied by an airport:

(A) (I) that is no longer in operation as an airport; or

(II) (Aa) that is scheduled to be decommissioned; and

(Bb) for which a replacement commercial service airport is under construction; and

(B) that is owned or was formerly owned and operated by a public entity; and

(iii) requires remediation because:

(A) of the presence of hazardous waste or solid waste; or

(B) the site lacks sufficient public infrastructure and facilities, including public roads, electric service, water system, and sewer system, needed to support development of the site.

(b) "Inactive airport site" includes a perimeter of up to 2,500 feet around the land described in Subsection [~~(22)~~] (23)(a).

[~~(23)~~] (24) (a) "Inactive industrial site" means land that:

(i) consists of at least 1,000 acres;

(ii) is occupied by an inactive or abandoned factory, smelter, or other heavy industrial facility; and

(iii) requires remediation because of the presence of hazardous waste or solid waste.

(b) "Inactive industrial site" includes a perimeter of up to 1,500 feet around the land described in Subsection [~~(23)~~] (24)(a).

[~~(24)~~] (25) "Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80% of the median annual income for the county in which the housing is located.

[~~(25)~~] (26) "Incremental value" means a figure derived by multiplying the marginal value of the property located within an urban renewal project area on which tax increment is collected by a number that represents the percentage of adjusted tax increment from that project area that is paid to the agency.

[~~(26)~~] (27) "Loan fund board" means the Olene Walker Housing Loan Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Loan Fund.

[~~(27)~~] (28) "Marginal value" means the difference between actual taxable value and base taxable value.

[~~(28)~~] (29) "Military installation project area" means a project area or a portion of a project area located within a federal military installation ordered closed by the federal Defense Base Realignment and Closure Commission.

(30) (a) "Municipal building" means a building owned and operated by a municipality for the purpose of providing one or more primary municipal functions, including:

(i) a fire station;

(ii) a police station;

(iii) a city hall; or

(iv) a court or other judicial building.

(b) "Municipal building" does not include a building the primary purpose of which is cultural or recreational in nature.

[~~(29)~~] (31) "Plan hearing" means the public hearing on a draft project area plan required under Subsection 17C-2-102(1)(a)(vi) for an urban renewal project area plan, Subsection 17C-3-102(1)(d) for an economic development project area plan, and Subsection 17C-4-102(1)(d) for a community development project area plan.

[~~(30)~~] (32) "Post-June 30, 1993, project area plan" means a project area plan adopted on or after July 1, 1993, whether or not amended subsequent to its adoption.

[~~(31)~~] (33) "Pre-July 1, 1993, project area plan" means a project area plan adopted before July 1, 1993, whether or not amended subsequent to its adoption.

[~~(32)~~] (34) "Private," with respect to real property, means:

(a) not owned by the United States or any agency of the federal government, a public entity, or any other governmental entity; and

(b) not dedicated to public use.

[~~(33)~~] (35) "Project area" means the geographic area described in a project area plan or draft project area plan where the urban renewal, economic development, or community development, as the case may be, set forth in the project area plan or draft project area plan takes place or is proposed to take place.

[~~(34)~~] (36) "Project area budget" means a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a urban renewal or economic development project area that includes:

(a) the base taxable value of property in the project area;

(b) the projected tax increment expected to be generated within the project area;

(c) the amount of tax increment expected to be shared with other taxing entities;

(d) the amount of tax increment expected to be used to implement the project area plan, including the estimated amount of tax increment to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;

(e) the tax increment expected to be used to cover the cost of administering the project area plan;

(f) if the area from which tax increment is to be collected is less than the entire project area:

(i) the tax identification numbers of the parcels from which tax increment will be collected; or

(ii) a legal description of the portion of the project area from which tax increment will be collected;

(g) for property that the agency owns and expects to sell, the expected total cost of the property to the agency and the expected selling price; and

(h) (i) for an urban renewal project area, the information required under Subsection 17C-2-201(1)(b); and

(ii) for an economic development project area, the information required under Subsection 17C-3-201(1)(b).

[~~(35)~~] (37) "Project area plan" means a written plan under Chapter 2, Part 1, Urban Renewal Project Area Plan, Chapter 3, Part 1, Economic Development Project Area Plan, or Chapter 4, Part 1, Community Development Project Area Plan, as the case may be, that, after its effective date, guides and controls the urban renewal, economic development, or community development activities within a project area.

[~~(36)~~] (38) "Property tax" includes privilege tax and each levy on an ad valorem basis on tangible or intangible personal or real property.

[~~(37)~~] (39) "Public entity" means:

(a) the state, including any of its departments or agencies; or

(b) a political subdivision of the state, including a county, city, town, school district, local district, special service district, or interlocal cooperation entity.

[~~(38)~~] (40) "Publicly owned infrastructure and improvements" means water, sewer, storm drainage, electrical, and other similar systems and lines, streets, roads, curb, gutter, sidewalk, walkways, parking facilities, public transportation facilities, and other facilities, infrastructure, and improvements benefitting the public and to be publicly owned or publicly maintained or operated.

[~~(39)~~] (41) "Record property owner" or "record owner of property" means the owner of real property as shown on the records of the recorder of the county in which the property is located and includes a purchaser under a real estate contract if the contract is recorded in the office of the recorder of the county in which the property is located or the purchaser gives written notice of the real estate contract to the agency.

[~~(40)~~] (42) "Superfund site":

(a) means an area included in the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9605; and

(b) includes an area formerly included in the National Priorities List, as described in Subsection [~~(40)~~] (42)(a), but removed from the list following remediation that leaves on site the waste that caused the area to be included in the National Priorities List.

[~~(41)~~] (43) "Survey area" means an area designated by a survey area resolution for study to determine whether one or more urban renewal projects within the area are feasible.

[~~(42)~~] (44) "Survey area resolution" means a resolution adopted by the agency board under Subsection 17C-2-101(1)(a) designating a survey area.

[~~(43)~~] (45) "Taxable value" means the value of property as shown on the last equalized assessment roll as certified by the county assessor.

[~~(44)~~] (46) (a) "Tax increment" means, except as provided in Subsection [~~(44)~~] (46)(b), the difference between:

(i) the amount of property tax revenues generated each tax year by all taxing entities from the area within a project area designated in the project area plan as the area from which tax increment is to be collected, using the current assessed value of the property; and

(ii) the amount of property tax revenues that would be generated from that same area using the base taxable value of the property.

(b) "Tax increment" does not include taxes levied and collected under Section 59-2-1602 on or after January 1, 1994, upon the taxable property in the project area unless:

(i) the project area plan was adopted before May 4, 1993, whether or not the project area plan was subsequently amended; and

(ii) the taxes were pledged to support bond indebtedness or other contractual obligations of the agency.

[~~(45)~~] (47) "Taxing entity" means a public entity that levies a tax on a parcel or parcels of property located within a community.

[~~(46)~~] (48) "Taxing entity committee" means a committee representing the interests of taxing entities, created as provided in Section 17C-1-402.

[~~(47)~~] (49) "Unincorporated" means not within a city or town.

[~~(48)~~] (50) (a) "Urban renewal" means the development activities under a project area plan within an urban renewal project area, including:

(i) planning, design, development, demolition, clearance, construction, rehabilitation, environmental remediation, or any combination of these, of part or all of a project area;

(ii) the provision of residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to them;

(iii) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any combination of these, existing structures in a project area;

(iv) providing open space, including streets and other public grounds and space around buildings;

(v) providing public or private buildings, infrastructure, structures, and improvements; and

(vi) providing improvements of public or private recreation areas and other public grounds.

(b) "Urban renewal" means "redevelopment," as defined under the law in effect before May 1, 2006, if the context requires.

Section 2. Section 17C-1-204 is amended to read:

17C-1-204. Urban renewal, economic development, and community development by an adjoining agency -- Requirements.

(1) An agency or community may, by resolution of its board or legislative body, respectively, authorize an agency to conduct urban renewal, economic development, or community development activities in a project area that includes an area within the authorizing agency's boundaries or within the boundaries of the authorizing community if the project area or community is contiguous to the boundaries of the other agency.

(2) If an agency board or community legislative body adopts a resolution under Subsection (1) authorizing another agency to undertake urban renewal, economic development, or community development activities in the authorizing agency's project area or within the boundaries of the authorizing community:

(a) the other agency may act in all respects as if the project area were within its own boundaries;

(b) the board of the other agency has all the rights, powers, and privileges with respect to the project area as if it were within its own boundaries; and

(c) the other agency may be paid tax increment funds to the same extent as if the project area were within its own boundaries.

(3) Each project area plan approved by the other agency for the project area that is the subject of a resolution under Subsection (1) shall be adopted by ordinance of the legislative body of the community in which the project area is located.

(4) (a) As used in this Subsection (4):

(i) "County agency" means an agency that was created by a county.

(ii) "Industrial property" means private real property:

(A) over half of which is located within the boundary of a town, as defined in Section 10-1-104; and

(B) comprises some or all of an inactive industrial site.

(iii) "Perimeter portion" means the portion of an inactive industrial site that is:

(A) part of the inactive industrial site because it lies within the perimeter described in Subsection 17C-1-102[~~(23)~~](25)(b); and

(B) located within the boundary of a city, as defined in Section 10-1-104.

(b) (i) Subject to Subsection (4)(b)(ii), a county agency may undertake urban renewal, economic development, or community development on industrial property if the record property owner of the industrial property submits a written request to the county agency to do so.

(ii) A county agency may not include a perimeter portion within a project area without the approval of the city in which the perimeter portion is located.

(c) If a county agency undertakes urban renewal, economic development, or community development on industrial property:

(i) the county agency may act in all respects as if the project area that includes the industrial property were within the county agency's boundary;

(ii) the board of the county agency has each right, power, and privilege with respect to the project area as if the project area were within the county agency's boundary; and

(iii) the county agency may be paid tax increment to the same extent as if the project area were within the county agency's boundary.

(d) A project area plan for a project on industrial property that is approved by the county agency shall be adopted by ordinance of the legislative body of the county in which the project area is located.

Section 3. Section 17C-1-401 is amended to read:

17C-1-401. Agency receipt and use of tax increment and sales tax -- Distribution of tax increment and sales tax.

(1) An agency may receive and use tax increment and sales tax, as provided in this part.

(2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment or sales tax under this part shall be measured:

(i) for a pre-July 1, 1993, project area plan, from the first tax year regarding which the agency accepts tax increment from the project area;

(ii) for a post-June 30, 1993, urban renewal or economic development project area plan, from the first tax year for which the agency receives tax increment under the project area budget; or

(iii) for a community development project area plan, as indicated in the resolution or interlocal agreement of a taxing entity that establishes the agency's right to receive tax increment or sales tax.

(b) Unless otherwise provided in a project area budget that is approved by a taxing entity committee, or in an interlocal agreement or resolution adopted by a taxing entity, tax increment may not be paid to an agency for a tax year prior to the tax year following:

(i) for an urban renewal or economic development project area plan, the effective date of the project area plan; and

(ii) for a community development project area plan, the effective date of the interlocal agreement that establishes the agency's right to receive tax increment.

(3) With respect to a community development project area plan:

(a) a taxing entity or public entity may, by resolution or through interlocal agreement, authorize an agency to be paid any or all of that taxing entity or public entity's tax increment or sales tax for any period of time; and

(b) the resolution or interlocal agreement authorizing the agency to be paid tax increment or sales tax shall specify:

(i) the base taxable value of the project area; and

(ii) the method of calculating the amount of tax increment or sales tax to be paid to the agency.

(4) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this title.

[~~(5) Each county that collects property tax on property within a project area shall pay and distribute to the agency the tax increment that the agency is entitled to collect under this title, in the manner and at the time provided in Section 59-2-1365.~~]

(5) (a) Subject to Section 17C-1-407, an agency is entitled to receive tax increment as authorized by:

(i) for a pre-July 1, 1993, project area plan, Section 17C-1-403;

(ii) for a post-June 30, 1993, project area plan:

(A) Section 17C-1-404 under a project area budget adopted by the agency in accordance with this title;

(B) a project area budget approved by the taxing entity committee and adopted by the agency in accordance with this title; or

(C) Section 17C-1-406; or

(iii) a resolution or interlocal agreement entered into under Section 17C-2-207, 17C-3-206, 17C-4-201, or 17C-4-202.

(b) A county that collects property tax on property located within a project area shall pay and distribute any tax increment:

(i) to an agency that the agency is entitled to collect; and

(ii) in accordance with Section 59-2-1365.

Section 4. Section 17C-1-402 is amended to read:

17C-1-402. Taxing entity committee.

(1) Each agency that adopts or proposes to adopt a post-June 30, 1993, urban renewal or economic development project area plan shall, and any other agency may, cause a taxing entity committee to be created.

(2) (a) (i) Each taxing entity committee shall be composed of:

(A) two school district representatives appointed as provided in Subsection (2)(a)(ii);

(B) (I) in a county of the second, third, fourth, fifth, or sixth class, two representatives appointed by resolution of the legislative body of the county in which the agency is located; or

(II) in a county of the first class, one representative appointed by the county executive and one representative appointed by the legislative body of the county in which the agency is located;

(C) if the agency was created by a city or town, two representatives appointed by resolution of the legislative body of that city or town;

(D) one representative appointed by the State Board of Education; and

(E) one representative selected by majority vote of the legislative bodies or governing boards of all other taxing entities that levy a tax on property within the agency's boundaries, to represent the interests of those taxing entities on the taxing entity committee.

(ii) (A) If the agency boundaries include only one school district, that school district shall appoint the two school district representatives under Subsection (2)(a)(i)(A).

(B) If the agency boundaries include more than one school district, those school districts shall jointly appoint the two school district representatives under Subsection (2)(a)(i)(A).

(b) (i) Each taxing entity committee representative under Subsection (2)(a) shall be appointed within 30 days after the agency provides notice of the creation of the taxing entity committee.

(ii) If a representative is not appointed within the time required under Subsection (2)(b)(i), the agency board may appoint a person to serve on the taxing entity committee in the place of the missing representative until that representative is appointed.

(c) (i) A taxing entity committee representative may be appointed for a set term or period of time, as determined by the appointing authority under Subsection (2)(a)(i).

(ii) Each taxing entity committee representative shall serve until a successor is appointed and qualified.

(d) (i) Upon the appointment of each representative under Subsection (2)(a)(i), whether an initial appointment or an appointment to replace an already serving representative, the appointing authority shall:

(A) notify the agency in writing of the name and address of the newly appointed representative; and

(B) provide the agency a copy of the resolution making the appointment or, if the appointment is not made by resolution, other evidence of the appointment.

(ii) Each appointing authority of a taxing entity committee representative under Subsection

(2)(a)(i) shall notify the agency in writing of any change of address of a representative appointed by that appointing authority.

(3) At its first meeting, a taxing entity committee shall adopt an organizing resolution:

(a) designating a chair and a secretary of the committee; and

(b) if the committee considers it appropriate, governing the use of electronic meetings under Section 52-4-207.

(4) (a) A taxing entity committee represents all taxing entities regarding:

(i) an urban renewal [~~or~~] project area; or

(ii) an economic development project area [~~and may:~~].

(b) A taxing entity committee may:

[~~(a)~~] (i) cast votes that will be binding on all taxing entities;

[~~(b)~~] (ii) negotiate with the agency concerning a draft project area plan;

[~~(c)~~] (iii) approve or disapprove:

(A) an urban renewal project area budget as provided in Section 17C-2-204; or

(B) an economic development project area budget as provided in Section 17C-3-203;

[~~(d)~~] (iv) approve or disapprove amendments to a project area budget as provided in:

(A) Section 17C-2-206 for an urban renewal project area budget [~~and~~]; or

(B) Section 17C-3-205 for an economic development project area budget;

[~~(e)~~] (v) approve exceptions to the limits on the value and size of a project area imposed under this title;

[~~(f)~~] (vi) approve exceptions to the percentage of tax increment and the period of time that tax increment is paid to the agency as provided in this title;

[~~(g)~~] (vii) approve the use of tax increment for publicly owned infrastructure and improvements outside of an urban renewal or economic development project area that the agency and community legislative body determine to be of benefit to the urban renewal or economic development project area, as provided in Subsection 17C-1-409(1)(a)(iii)(D);

[~~(h)~~] (viii) waive the restrictions imposed by Subsection 17C-2-202(1); and

[~~(i)~~] (ix) give other taxing entity committee approval or consent required or allowed under this title.

(5) A quorum of a taxing entity committee consists of:

(a) if the [~~urban renewal or economic development~~] project area is located within a city or town, five members; or

(b) if the [~~urban renewal or economic development~~] project area is not located within a city or town, four members.

(6) Taxing entity committee approval, consent, or other action requires:

(a) the affirmative vote of a majority of all members present at a taxing entity committee meeting:

(i) at which a quorum is present; and

(ii) considering an action relating to a project area budget for, or approval of a finding of blight within, a project area or proposed project area that contains:

(A) an inactive industrial site;

(B) an inactive airport site; or

(C) a closed military base; or

(b) for any other action not described in Subsection (6)(a)(ii), the affirmative vote of two-thirds of all members present at a taxing entity committee meeting at which a quorum is present.

(7) (a) An agency may call a meeting of the taxing entity committee by sending written notice to the members of the taxing entity committee at least 10 days before the date of the meeting.

(b) Each notice under Subsection (7)(a) shall be accompanied by:

(i) the proposed agenda for the taxing entity committee meeting; and

(ii) if not previously provided and if they exist and are to be considered at the meeting:

(A) the [~~urban renewal or economic development~~] project area plan or proposed plan;

(B) the [~~urban renewal or economic development~~] project area budget or proposed budget;

(C) the analysis required under Subsection 17C-2-103(2) or 17C-3-103(2);

(D) the blight study;

(E) the agency's resolution making a finding of blight under Subsection 17C-2-102(1)(a) (ii)(B); and

(F) other documents to be considered by the taxing entity committee at the meeting.

(c) (i) An agency may not schedule a taxing entity committee meeting to meet on a day on which the Legislature is in session.

(ii) Notwithstanding Subsection (7)(c)(i), the taxing entity committee may, by unanimous consent, waive the scheduling restriction described in Subsection (7)(c)(i).

(8) (a) A taxing entity committee may not vote on a proposed [~~urban renewal or economic development~~] project area budget or proposed

amendment to [~~an urban renewal or economic development~~] a project area budget at the first meeting at which the proposed budget or amendment is considered unless all members of the taxing entity committee present at the meeting consent.

(b) A second taxing entity committee meeting to consider [~~an urban renewal or economic development~~] a project area budget or a proposed amendment to [~~an urban renewal or economic development~~] a project area budget may not be held within 14 days after the first meeting unless all members of the taxing entity committee present at the first meeting consent.

(9) [~~Each~~] (a) Except as provided in Subsection (9)(b), each taxing entity committee shall meet at least annually during the time that the agency receives tax increment under an urban renewal or economic development project area budget in order to review the status of the project area.

(b) A taxing entity committee is not required under Subsection (9)(a) to meet if the agency submits on or before November 1 of each year to the county auditor, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment, a report containing the following:

(i) an assessment of growth of incremental values for each active project area, including:

(A) the base year assessed value;

(B) the prior year's assessed value;

(C) the estimated current year assessed value for the project area; and

(D) a narrative description of the relative growth in assessed value within the project area;

(ii) a description of the amount of tax increment received by the agency and passed through to other taxing entities from each active project area, including:

(A) a comparison of the original forecasted amount of tax increment to actual receipts;

(B) a narrative discussion regarding the use of tax increment; and

(C) a description of the benefits derived by the taxing entities;

(iii) a description of activity within each active project area, including:

(A) a narrative of any significant development activity, including infrastructure development, site development, and vertical construction within the project area; and

(B) a narrative discussion regarding the status of any agreements for development within the project area;

(iv) a revised multi-year tax increment budget related to each active project area, including:

(A) the prior year's tax increment receipts;

(B) the base year value and adjusted base year value, as applicable;

(C) the applicable tax rates within the project area; and

(D) a schedule of private and public investment within the project area; and

(v) any other project highlights included by the agency.

(10) Each taxing entity committee shall be governed by Title 52, Chapter 4, Open and Public Meetings Act.

(11) Each time a school district representative or a representative of the State Board of Education votes as a member of a taxing entity committee to allow an agency to be paid tax increment or to increase the amount or length of time that an agency may be paid tax increment, that representative shall, within 45 days after the vote, provide to the representative's respective school board an explanation in writing of the representative's vote and the reasons for the vote.

(12) (a) The auditor of each county in which the agency is located shall provide a written report to the taxing entity committee stating, with respect to property within each urban renewal and economic development project area:

(i) the base taxable value, as adjusted by any adjustments under Section 17C-1-408; and

(ii) the assessed value.

(b) With respect to the information required under Subsection (12)(a), the auditor shall provide:

(i) actual amounts for each year from the adoption of the [~~urban renewal and economic development~~] project area plan to the time of the report; and

(ii) estimated amounts for each year beginning the year after the time of the report and ending the time that the agency expects no longer to be paid tax increment from property within the urban renewal and economic development project area.

(c) The auditor of the county in which the agency is located shall provide a report under this Subsection (12):

(i) at least annually; and

(ii) upon request of the taxing entity committee, before a taxing entity committee meeting at which the committee will consider whether to allow the agency to be paid tax increment or to increase the amount of tax increment that the agency may be paid or the length of time that the agency may be paid tax increment.

(13) This section does not apply to a community development project area plan.

(14) A taxing entity committee resolution, whether adopted before, on, or after May 10, 2011, approving a blight finding, approving a project area

budget, or approving an amendment to a project area budget:

(a) is final; and

(b) is not subject to repeal, amendment, or reconsideration unless the agency first consents by resolution to the proposed repeal, amendment, or reconsideration.

Section 5. Section 17C-1-409 is amended to read:

17C-1-409. Allowable uses of tax increment and sales tax.

(1) (a) An agency may use tax increment and sales tax proceeds received from a taxing entity:

(i) for any of the purposes for which the use of tax increment is authorized under this title;

(ii) for administrative, overhead, legal, and other operating expenses of the agency, including consultant fees and expenses under Subsection 17C-2-102(1)(b)(ii)(B) or funding for a business resource center;

(iii) to pay for, including financing or refinancing, all or part of:

(A) urban renewal activities in the project area from which the tax increment funds are collected, including environmental remediation activities occurring before or after adoption of the project area plan;

(B) economic development or community development activities, including environmental remediation activities occurring before or after adoption of the project area plan, in the project area from which the tax increment funds are collected;

(C) housing expenditures, projects, or programs as provided in Section 17C-1-411 or 17C-1-412;

(D) subject to Subsections (1)(c) and (6), the value of the land for and the cost of the installation and construction of any publicly owned building, facility, structure, landscaping, or other improvement within the project area from which the tax increment funds were collected; and

(E) subject to Subsection (1)(d), the cost of the installation of publicly owned infrastructure and improvements outside the project area from which the tax increment funds were collected if the agency board and the community legislative body determine by resolution that the publicly owned infrastructure and improvements are of benefit to the project area; or

(iv) in an urban renewal project area that includes some or all of an inactive industrial site and subject to Subsection (1)(f), to reimburse the Department of Transportation created under Section 72-1-201, or a public transit district created under Title 17B, Chapter 2a, Part 8, Public Transit District Act, for the cost of:

(A) construction of a public road, bridge, or overpass;

(B) relocation of a railroad track within the urban renewal project area; or

(C) relocation of a railroad facility within the urban renewal project area.

(b) The determination of the agency board and the community legislative body under Subsection (1)(a)(iii)(E) regarding benefit to the project area shall be final and conclusive.

(c) An agency may not use tax increment or sales tax proceeds received from a taxing entity for the purposes stated in Subsection (1)(a)(iii)(D) under an urban renewal or economic development project area plan without the consent of the community legislative body.

(d) An agency may not use tax increment or sales tax proceeds received from a taxing entity for the purposes stated in Subsection (1)(a)(iii)(E) under an urban renewal or economic development project area plan without the consent of the community legislative body and the taxing entity committee.

(e) (i) Subject to Subsection (1)(e)(ii), an agency may loan tax increment or sales tax proceeds, or a combination of tax increment and sales tax proceeds, from a project area fund to another project area fund if:

(A) the agency's board approves; and

(B) the legislative body of each community that created the agency approves.

(ii) An agency may not loan tax increment or sales tax proceeds, or a combination of tax increment and sales tax proceeds, under Subsection (1)(e)(i) unless the projections for the future tax increment or sales tax proceeds of the borrowing project area are sufficient to repay the loan amount prior to when the tax increment or sales tax proceeds are intended for use under the loaning project area's plan.

(iii) If a borrowing project area's funds are not sufficient to repay a loan made under Subsection (1)(e)(i) prior to when the tax increment or sales tax proceeds are intended for use under the loaning project area's plan, the community that created the agency shall repay the loan to the loaning project area's fund prior to when the tax increment or sales tax proceeds are intended for use under the loaning project area's plan, unless the taxing entity committee adopts a resolution to waive this requirement.

(f) Before an agency may pay any tax increment or sales tax revenue under Subsection (1)(a)(iv), the agency shall enter into an interlocal agreement defining the terms of the reimbursement with:

(i) the Department of Transportation; or

(ii) a public transit district.

(2) Sales tax proceeds that an agency receives from another public entity are not subject to the prohibition or limitations of Title 11, Chapter 41, Prohibition on Sales and Use Tax Incentive Payments Act.

(3) An agency may use sales tax proceeds it receives under a resolution or interlocal agreement

under Section 17C-4-201 for the uses authorized in the resolution or interlocal agreement.

(4) (a) An agency may contract with the community that created the agency or another public entity to use tax increment to reimburse the cost of items authorized by this title to be paid by the agency that have been or will be paid by the community or other public entity.

(b) If land has been or will be acquired or the cost of an improvement has been or will be paid by another public entity and the land or improvement has been or will be leased to the community, an agency may contract with and make reimbursement from tax increment funds to the community.

(5) An agency created by a city of the first or second class may use tax increment from one project area in another project area to pay all or part of the value of the land for and the cost of the installation and construction of a publicly or privately owned convention center or sports complex or any building, facility, structure, or other improvement related to the convention center or sports complex, including parking and infrastructure improvements, if:

(a) construction of the convention center or sports complex or related building, facility, structure, or other improvement is commenced on or before [~~June 30, 2002~~] December 31, 2012; and

(b) the tax increment is pledged to pay all or part of the value of the land for and the cost of the installation and construction of the convention center or sports complex or related building, facility, structure, or other improvement.

(6) Notwithstanding any other provision of this title, an agency may not use tax increment to construct municipal buildings[~~, courts or other judicial buildings, or fire stations~~] unless the taxing entity committee adopts a resolution to waive this requirement.

(7) Notwithstanding any other provision of this title, an agency may not use tax increment under an urban renewal or economic development project area plan, to pay any of the cost of the land, infrastructure, or construction of a stadium or arena constructed after March 1, 2005, unless the tax increment has been pledged for that purpose before February 15, 2005.

(8) (a) An agency may not use tax increment to pay the debt service of or any other amount related to a bond issued or other obligation incurred if the bond was issued or the obligation was incurred:

(i) by an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act;

(ii) on or after March 30, 2009; and

(iii) to finance a telecommunication facility.

(b) Subsection (8)(a) may not be construed to prohibit the refinancing, restatement, or refunding of a bond issued before March 30, 2009.

Section 6. Section 17C-1-603 is amended to read:

17C-1-603. Agency report.

(1) (a) [~~On~~] Unless an agency submits a report to the county auditor, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment as provided under Subsection 17C-1-402(9)(b), on or before November 1 of each year, each agency shall prepare and file a report with the county auditor, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment.

(b) The requirement of Subsection (1)(a) to file a copy of the report with the state as a taxing entity is met if the agency files a copy with the State Tax Commission and the state auditor.

(2) Each report under Subsection (1) shall contain:

(a) an estimate of the tax increment to be paid to the agency for the calendar year ending December 31; [~~and~~]

(b) an estimate of the tax increment to be paid to the agency for the calendar year beginning the next January 1[~~.~~];

(c) a narrative description of each active project area within the agency's boundaries;

(d) a narrative description of any significant activity related to each active project area that occurred during the immediately preceding fiscal year;

(e) a summary description of the overall project timeline for each active project area;

(f) any other information specifically requested by the taxing entity committee or required by the project area plan or budget; and

(g) any other information included by the agency.

(3) A report prepared in accordance with this section:

(a) is for informational purposes; and

(b) does not alter the amount of tax increment that an agency is entitled to collect from a project area.

Section 7. Section 17C-2-206 is amended to read:

17C-2-206. Amending an urban renewal project area budget.

(1) An agency may by resolution amend an urban renewal project area budget as provided in this section.

(2) To amend an adopted urban renewal project area budget, the agency shall:

(a) advertise and hold one public hearing on the proposed amendment as provided in Subsection (3);

(b) if approval of the taxing entity committee was required for adoption of the original project area

budget, obtain the approval of the taxing entity committee [~~if~~] to the same extent that the agency was required [~~under Section 17C-2-204~~] to obtain the consent of the taxing entity committee for the project area budget as originally adopted;

(c) if approval of the taxing entity committee is required under Subsection (2)(b), obtain a written certification, signed by an attorney licensed to practice law in this state, stating that the taxing entity committee followed the appropriate procedures to approve the project area budget; and

(d) adopt a resolution amending the project area budget.

(3) The public hearing required under Subsection (2)(a) shall be conducted according to the procedures and requirements of Subsections 17C-2-201(2)(c) and (d), except that if the amended project area budget proposes that the agency be paid a greater proportion of tax increment from a project area than was to be paid under the previous project area budget, the notice shall state the percentage paid under the previous project area budget and the percentage proposed under the amended project area budget.

(4) If a proposed amendment is not adopted, the agency shall continue to operate under the previously adopted project area budget without the proposed amendment.

(5) (a) A person may contest the agency's adoption of a budget amendment within 30 days after the day on which the agency adopts the amendment.

(b) A person who fails to contest a budget amendment under Subsection (5)(a):

(i) forfeits any claim against an agency's adoption of the amendment; and

(ii) may not contest:

(A) a payment to the agency under the budget amendment; or

(B) an agency's use of a tax increment under the budget amendment.

Section 8. Section 17C-2-207 is enacted to read:

17C-2-207. Extending collection of tax increment in an urban renewal project area budget.

(1) An amendment or extension approved by a taxing entity or taxing entity committee before May 10, 2011, is not subject to this section.

(2) (a) An agency's collection of tax increment under an adopted urban renewal project area budget may be extended by:

(i) following the project area budget amendment procedures outlined in Section 17C-2-206; or

(ii) following the procedures outlined in this section.

(b) The base taxable value for an urban renewal project area budget may not be altered as a result of an extension under this section unless otherwise expressly provided for in an interlocal agreement adopted in accordance with Subsection (3)(a).

(3) To extend under this section the agency's collection of tax increment from a taxing entity under a previously approved project area budget, the agency shall:

(a) obtain the approval of the taxing entity through an interlocal agreement;

(b) (i) hold a public hearing on the proposed extension in accordance with Subsection 17C-2-201(2)(d) in the same manner as required for a draft project area budget; and

(ii) provide notice of the hearing:

(A) as required by Part 5, Urban Renewal Notice Requirements; and

(B) including the proposed period of extension of the project area budget; and

(c) after obtaining the approval of the taxing entity in accordance with Subsection (3)(a), at or after the public hearing, adopt a resolution approving the extension.

(4) After the expiration of a project area budget, an agency may continue to receive tax increment from those taxing entities that have agreed to an extension through an interlocal agreement in accordance with Subsection (3)(a).

(5) (a) A person may contest the agency's adoption of a budget extension within 30 days after the day on which the agency adopts the resolution providing for the extension.

(b) A person who fails to contest a budget extension under Subsection (5)(a):

(i) shall forfeit any claim against the agency's adoption of the extension; and

(ii) may not contest:

(A) a payment to the agency under the budget, as extended; or

(B) an agency's use of tax increment under the budget, as extended.

Section 9. Section 17C-2-303 is amended to read:

17C-2-303. Conditions on board determination of blight -- Conditions of blight caused by the developer.

(1) An agency board may not make a finding of blight in a resolution under Subsection 17C-2-102(1)(a)(ii)(B) unless the board finds that:

(a) (i) the proposed project area consists predominantly of nongreenfield parcels;

(ii) the proposed project area is currently zoned for urban purposes and generally served by utilities;

(iii) at least 50% of the parcels within the proposed project area contain nonagricultural or nonaccessory buildings or improvements used or

intended for residential, commercial, industrial, or other urban purposes, or any combination of those uses;

(iv) the present condition or use of the proposed project area substantially impairs the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic liability or is detrimental to the public health, safety, or welfare, as shown by the existence within the proposed project area of at least four of the following factors:

(A) one of the following, although sometimes interspersed with well maintained buildings and infrastructure:

(I) substantial physical dilapidation, deterioration, or defective construction of buildings or infrastructure; or

(II) significant noncompliance with current building code, safety code, health code, or fire code requirements or local ordinances;

(B) unsanitary or unsafe conditions in the proposed project area that threaten the health, safety, or welfare of the community;

(C) environmental hazards, as defined in state or federal law, that require remediation as a condition for current or future use and development;

(D) excessive vacancy, abandoned buildings, or vacant lots within an area zoned for urban use and served by utilities;

(E) abandoned or outdated facilities that pose a threat to public health, safety, or welfare;

(F) criminal activity in the project area, higher than that of comparable nonblighted areas in the municipality or county; and

(G) defective or unusual conditions of title rendering the title nonmarketable; and

(v) (A) at least 50% of the privately-owned parcels within the proposed project area are affected by at least one of the factors, but not necessarily the same factor, listed in Subsection (1)(a)(iv); and

(B) the affected parcels comprise at least 66% of the privately-owned acreage of the proposed project area; or

(b) the proposed project area includes some or all of a superfund site, inactive industrial site, or inactive airport site.

(2) No single parcel comprising 10% or more of the acreage of the proposed project area may be counted as satisfying Subsection (1)(a)(iii) or (iv) unless at least 50% of the area of that parcel is occupied by buildings or improvements.

(3) (a) For purposes of Subsection (1), if a developer involved in the urban renewal project has caused a condition listed in Subsection (1)(a)(iv) within the proposed project area, that condition may not be used in the determination of blight.

(b) Subsection (3)(a) does not apply to a condition that was caused by an owner or tenant who becomes a developer.

Section 10. Section 17C-2-701 is enacted to read:

Part 7. Urban Renewal Project Area Property

17C-2-701. Railroad crossings within urban renewal project area.

(1) Notwithstanding Section 54-4-15 or other provision of law, and except as provided in Subsection (2), the Department of Transportation created in Section 72-1-201 may not prohibit or close, temporarily or permanently, a public road or highway crossing by a railroad or street railroad that is located within the boundaries of an urban renewal project area that includes some or all of an inactive industrial site.

(2) The Department of Transportation may prohibit or close a crossing described in Subsection (1) if the department obtains the advance written consent of the agency that created the urban renewal project area where the crossing is located.

Section 11. Section 17C-3-205 is amended to read:

17C-3-205. Amending an economic development project area budget.

(1) An agency may by resolution amend an economic development project area budget as provided in this section.

(2) To amend an adopted economic development project area budget, the agency shall:

(a) advertise and hold one public hearing on the proposed amendment as provided in Subsection (3);

(b) if approval of the taxing entity committee was required for adoption of the original project area budget, obtain the approval of the taxing entity committee [~~if~~] to the same extent that the agency was required [~~under Section 17C-3-203~~] to obtain the consent of the taxing entity committee for the project area budget as originally adopted;

(c) if approval of the taxing entity committee is required under Subsection (2)(b), obtain a written certification, signed by an attorney licensed to practice law in this state, stating that the taxing entity committee followed the appropriate procedures to approve the project area budget; and

(d) adopt a resolution amending the project area budget.

(3) The public hearing required under Subsection (2)(a) shall be conducted according to the procedures and requirements of Section 17C-3-201, except that if the amended project area budget proposes that the agency be paid a greater proportion of tax increment from a project area than was to be paid under the previous project area budget, the notice shall state the percentage paid under the previous project area budget and the percentage proposed under the amended project area budget.

(4) If a proposed amendment is not adopted, the agency shall continue to operate under the previously adopted economic development project area budget without the proposed amendment.

(5) (a) A person may contest the agency's adoption of a budget amendment within 30 days after the day on which the agency adopts the amendment.

(b) A person who fails to contest a budget amendment under Subsection (5)(a):

(i) forfeits any claim against an agency's adoption of the amendment; and

(ii) may not contest:

(A) a payment to the agency under the budget amendment; or

(B) an agency's use of a tax increment under a budget amendment.

Section 12. Section 17C-3-206 is enacted to read:

17C-3-206. Extending collection of tax increment under an economic development project area budget.

(1) An amendment or extension approved by a taxing entity or taxing entity committee before May 10, 2011, is not subject to this section.

(2) (a) An agency's collection of tax increment under an adopted economic development project area budget may be extended by:

(i) following the project area budget amendment procedures outlined in Section 17C-3-205; or

(ii) following the procedures outlined in this section.

(b) The base taxable value for an urban renewal project area budget may not be altered as a result of an extension under this section unless otherwise expressly provided for in an interlocal agreement adopted in accordance with Subsection (3)(a).

(3) To extend under this section the agency's collection of tax increment from a taxing entity under a previously approved project area budget, the agency shall:

(a) obtain the approval of the taxing entity through an interlocal agreement;

(b) (i) hold a public hearing on the proposed extension in accordance with Subsection 17C-2-201(2)(d) in the same manner as required for a draft project area budget; and

(ii) provide notice of the hearing:

(A) as required by Part 4, Economic Development Notice Requirements; and

(B) including the proposed period of extension of the project area budget; and

(c) after obtaining the approval of the taxing entity in accordance with Subsection (3)(a), at or after the public hearing, adopt a resolution approving the extension.

(4) After the expiration of a project area budget, an agency may continue to receive tax increment from those taxing entities that have agreed to an extension through an interlocal agreement in accordance with Subsection (3)(a).

(5) (a) A person may contest the agency's adoption of a budget extension within 30 days after the day on which the agency adopts the resolution providing for the extension.

(b) A person who fails to contest a budget extension under Subsection (5)(a):

(i) shall forfeit any claim against the agency's adoption of the extension; and

(ii) may not contest:

(A) a payment to the agency under the budget, as extended; or

(B) an agency's use of tax increment under the budget, as extended.

Section 13. Section 17C-4-204 is amended to read:

17C-4-204. Adoption of a budget for a community development project area plan -- Amendment.

(1) An agency may prepare and, by resolution adopted at a regular or special meeting of the agency board, adopt a budget setting forth:

(a) the anticipated costs, including administrative costs, of implementing the community development project area plan; and

(b) the tax increment, sales tax, and other revenue the agency anticipates receiving to fund the project.

(2) An agency may, by resolution adopted at a regular or special meeting of the agency board, amend a budget adopted under Subsection (1).

(3) Each resolution to adopt or amend a budget under this section shall appear as an item on the agenda for the regular or special agency board meeting at which the resolution is adopted[~~. No other notice is required.~~] without additional required notice.

(4) An agency is not required to obtain approval of the taxing entity committee for a community development project area budget.

CHAPTER 44
S. B. 125
Passed February 24, 2011
Approved March 16, 2011
Effective March 16, 2011
(Retrospective operation to January 1, 2008)

PROPERTY TAX EXEMPTION AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Patrick Painter

LONG TITLE

General Description:

This bill modifies a provision related to property tax exemptions.

Highlighted Provisions:

This bill:

- specifies that, for purposes of a property tax exemption for property used exclusively for educational purposes, "educational purposes" includes the physical or mental teaching, training, or conditioning of competitive athletes by specified entities;
- provides that a charter school is considered to be a school district for purposes of a property tax exemption for property of a school district; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.This bill has retrospective operation for a taxable year beginning on or after January 1, 2008.

Utah Code Sections Affected:

AMENDS:

59-2-1101, as last amended by Laws of Utah 2007, Chapter 329

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

Section 1. Section 59-2-1101 is amended to read:

59-2-1101. Exemption of certain property -- Proportional payments for certain property -- County legislative body authority to adopt rules or ordinances.

(1) [~~For purposes of~~] As used in this section:

(a) "Educational purposes" includes:

(i) the physical or mental teaching, training, or conditioning of competitive athletes by a national governing body of sport recognized by the United States Olympic Committee that qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code; and

(ii) an activity in support of or incidental to the teaching, training, or conditioning described in Subsection (1)(a)(i).

[~~(a)~~] (b) "Exclusive use exemption" means a property tax exemption under Subsection (3)[~~(d)~~](a)(iv), for property owned by a nonprofit entity that is used exclusively for religious, charitable, or educational purposes[~~;~~].

[~~(b)~~] (c) "Government exemption" means a property tax exemption provided under Subsection (3)(a)[~~, (b), or (c); and~~](i), (ii), or (iii).

[~~(c)~~] (d) "Tax relief" means an exemption, deferral, or abatement that is authorized by this part.

(2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

(i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a)[~~, (b), or (c)~~](i), (ii), or (iii); or

(ii) pursuant to Subsection (3)[~~(d)~~](a)(iv):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes.

(c) Notwithstanding Subsection (2)(a), a claimant may be allowed a veteran's exemption in accordance with Sections 59-2-1104 and 59-2-1105 regardless of whether the claimant is the owner of the property as of January 1 of the year the exemption is claimed if the claimant is:

(i) the unmarried surviving spouse of:

(A) a deceased disabled veteran as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104; or

(ii) a minor orphan of:

(A) a deceased disabled veteran as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104.

(3) (a) The following property is exempt from taxation:

[~~(a)~~] (i) property exempt under the laws of the United States;

[~~(b)~~] (ii) property of:

[~~(i)~~] (A) the state;

[~~(ii)~~] (B) school districts; and

[~~(iii)~~] (C) public libraries;

[~~(c)~~] (iii) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:

[~~(i)~~] (A) counties;

[~~(ii)~~] (B) cities;

[~~(iii)~~] (C) towns;

[~~(iv)~~] (D) local districts;

[~~(v)~~] (E) special service districts; and

[~~(vi)~~] (F) all other political subdivisions of the state;

[~~(d)~~] (iv) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

[~~(e)~~] (v) places of burial not held or used for private or corporate benefit;

[~~(f)~~] (vi) farm equipment and machinery;

[~~(g)~~] (vii) intangible property; and

[~~(h)~~] (viii) the ownership interest of an out-of-state public agency, as defined in Section 11-13-103:

[~~(i)~~] (A) if that ownership interest is in property providing additional project capacity, as defined in Section 11-13-103; and

[~~(ii)~~] (B) on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(b) For purposes of a property tax exemption for property of school districts under Subsection (3)(a)(ii)(B), a charter school under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, is considered to be a school district.

(4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or a government exemption ceases to qualify for the exemption because of a change in the ownership of the property:

(a) the new owner of the property shall pay a proportional tax based upon the period of time:

(i) beginning on the day that the new owner acquired the property; and

(ii) ending on the last day of the calendar year during which the new owner acquired the property; and

(b) the new owner of the property and the person from whom the new owner acquires the property shall notify the county assessor, in writing, of the change in ownership of the property within 30 days from the day that the new owner acquires the property.

(5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection (4)(a):

(a) is subject to any exclusive use exemption or government exemption that the property is entitled to under the new ownership of the property; and

(b) applies only to property that is acquired after December 31, 2005.

(6) A county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 3. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2008.

CHAPTER 45
S. B. 142
Passed February 25, 2011
Approved March 16, 2011
Effective May 10, 2011

PUBLIC OFFICIAL CONTACT INFORMATION

Chief Sponsor: Howard A. Stephenson
House Sponsor: Carl Wimmer

LONG TITLE

General Description:

This bill requires elected officials and school community council members to have contact information and accordingly amends the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- requires a community council member to have a telephone number, if available, and email address, if available, where the member can be reached;
- requires an elected official to have a telephone number, if available, and email address, if available, where the official can be reached directly;
- provides that the contact information is public under the Government Records Access and Management Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 186, Utah Code Technical Amendments, by providing superseding technical amendments.

Utah Code Sections Affected:

AMENDS:

53A-1a-108, as last amended by Laws of Utah 2008, Chapters 157, 178, and 332

63G-2-301, as last amended by Laws of Utah 2009, Chapter 344

ENACTS:

11-46-101, Utah Code Annotated 1953

11-46-102, Utah Code Annotated 1953

11-46-103, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

53A-1a-108, as last amended by Laws of Utah 2008, Chapters 157, 178, and 332

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

Section 1. Section 11-46-101 is enacted to read:

CHAPTER 46. ACCESS TO ELECTED OFFICIALS

11-46-101. (Codified as 11-47-101) Title.

This chapter is known as "Access to Elected Officials."

Section 2. Section 11-46-102 is enacted to read:

11-46-102. (Codified as 11-47-102) Definitions.

For purposes of this chapter, "elected official" means each person elected to a county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

Section 3. Section 11-46-103 is enacted to read:

11-46-103. (Codified as 11-47-103) Public contact information.

Each elected official shall have a telephone number, if available, and an email address, if available, where that elected official may be reached directly.

Section 4. Section 53A-1a-108 is amended to read:

53A-1a-108. School community councils authorized -- Duties -- Composition -- Election procedures and selection of members.

(1) As used in this section:

(a) (i) "Parent or guardian member" means a member of a school community council who is a parent or guardian of a student who is attending the school or who will be enrolled at the school at any time during the parent's or guardian's initial term of office.

(ii) "Parent or guardian member" may not include a person who meets the definition of a school employee member unless the person's employment at the school does not exceed an average of six hours per week.

(b) "School employee member" means a member of a school community council who is a person employed at a school by the school or school district, including the principal.

(2) Each public school, in consultation with its local school board, shall establish a school community council at the school building level.

(3) (a) Each school community council shall:

(i) develop a school improvement plan in accordance with Section 53A-1a-108.5;

(ii) develop the School LAND Trust Program in accordance with Section 53A-16-101.5;

(iii) assist in the development and implementation of a staff professional development plan as provided by Section 53A-3-701;

(iv) develop a child access routing plan in accordance with Section 53A-3-402; and

(v) advise and make recommendations to school and school district administrators and the local school board regarding the school and its programs, school district programs, and other issues relating to the community environment for students.

(b) In addition to the duties specified in Subsection (3)(a), a school community council for an

elementary school shall develop a reading achievement plan in accordance with Section 53A-1-606.5.

(4) (a) Each school community council shall consist of school employee members and parent or guardian members in accordance with this section.

(b) Except as provided in Subsection (4)(c):

(i) each school community council for a high school shall have six parent or guardian members and five school employee members, including the principal; and

(ii) each school community council for a school other than a high school shall have four parent or guardian members and three school employee members, including the principal.

(c) (i) A school community council may have a larger membership provided that the number of parent or guardian members exceeds the number of school employee members.

(ii) A school community council may have a smaller membership provided that:

(A) the number of parent or guardian members exceeds the number of school employee members; and

(B) there are at least two school employee members on the school community council.

(5) (a) Each school employee member, except the principal, shall be elected by secret ballot by a majority vote of the school employees and serve a two-year term. The principal shall serve as an ex officio member with full voting privileges.

(b) (i) Each parent or guardian member shall be elected by secret ballot at an election held at the school by a majority vote of those voting at the election and serve a two-year term.

(ii) Only parents or guardians of students attending the school may vote at the election under Subsection (5)(b)(i).

(iii) Any parent or guardian of a student who meets the qualifications of this section may file or declare himself as a candidate for election to a school community council.

(c) (i) The principal of the school, or the principal's designee, shall provide notice of the available community council positions to school employees, parents, and guardians at least 14 days before the date that voting commences for the elections held under Subsections (5)(a) and (5)(b).

(ii) The notice shall include:

(A) the dates and times of the elections;

(B) a list of council positions that are up for election; and

(C) instructions for becoming a candidate for a community council position.

(iii) The principal of the school, or the principal's designee, shall oversee the elections held under Subsections (5)(a) and (5)(b).

(iv) Ballots cast in an election held under Subsection (5)(b) shall be deposited in a secure ballot box[~~;~~].

(d) Results of the elections held under Subsections (5)(a) and (5)(b) shall be made available to the public upon request.

(e) (i) If a parent or guardian position on a school community council remains unfilled after an election is held, the other parent or guardian members of the council shall appoint a parent or guardian who meets the qualifications of this section to fill the position.

(ii) If a school employee position on a school community council remains unfilled after an election is held, the other school employee members of the council shall appoint a school employee to fill the position.

(iii) The chair of the community council shall notify the local school board of each appointment made under Subsection (5)(e)(i)[~~,~~] or (ii)[~~, or (iii)~~].

(iv) A member appointed to a school community council under Subsection (5)(e)(i) or (ii) shall serve a two-year term.

(f) Initial terms shall be staggered so that no more than 50% of the council members stand for election in any one year.

(g) (i) Each public school, in consultation with its local school board, shall set the beginning date of the term of office for school community council members.

(ii) Council members may serve up to three successive terms.

(h) (i) Each school community council shall elect a chair and vice chair from its parent or guardian members and elected employee members.

(ii) No more than one parent or guardian member or elected employee member may at the same time serve as an officer specified in Subsection (5)(h)(i).

(6) (a) A school community council may create subcommittees or task forces to:

(i) advise or make recommendations to the council; or

(ii) develop all or part of a plan listed in Subsection (3).

(b) Any plan or part of a plan developed by a subcommittee or task force shall be subject to the approval of the school community council.

(c) A school community council may appoint individuals who are not council members to serve on a subcommittee or task force, including parents, school employees, or other community members.

(7) (a) A school community council shall provide the following information:

(i) the proposed school community council meeting schedule for the year, provided during the first two weeks of the school year;

(ii) a summary of the school community council's actions and activities during the first half of the

school year information, provided at the mid-point of the school year; [~~and~~]

(iii) a summary of the annual report required under Section 53A-16-101.5 on how the school's School LAND Trust Program monies were used to enhance or improve academic excellence at the school and implement a component of the school's improvement plan, provided at the beginning of the next school year[~~.~~]; and

(iv) a telephone number, if available, and email address, if available, where each community council member can be reached directly.

(b) The school community council shall provide the information described in Subsection (7)(a) by:

(i) posting the information on the school's website; and

(ii) providing individual delivery to each household that has a student attending the school by:

(A) mailing the information;

(B) delivering a voice message describing the information and explaining where to obtain the full information;

(C) sending an email message containing the information;

(D) providing the information in a packet that is to be delivered to a student's parent or guardian:

(I) during the school's annual registration period; or

(II) with the student's report card; or

(E) using a combination of the methods described in Subsections (7)(b)(ii)(A) through (D).

(8) A school community council shall, at least one week prior to a meeting, post the following information on the school's website:

(a) notice of the meeting date, time, and place;

(b) an agenda for the meeting; and

(c) a summary of the previous meeting.

Section 5. Section 63G-2-301 is amended to read:

63G-2-301. Records that must be disclosed.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63G-2-305(16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is

the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; [~~and~~]

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63G-2-302(1)(i)[~~.~~];

(m) for an elected official, as defined in Section 11-46-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 46, Access to Elected Officials; and

(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53A-1a-108.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 6. Coordinating S.B. 142 with H.B. 186 -- Superseding technical amendments.

If this S.B. 142 and H.B. 186, Utah Code Technical Amendments, both pass, it is the intent of the Legislature that the amendments to Subsection 53A-1a-108(5)(e)(iii) in this bill supersede the amendments to Subsection 53A-1a-108(5)(e)(iii) in H.B. 186 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

CHAPTER 46
S. B. 145
Passed February 28, 2011
Approved March 16, 2011
Effective March 16, 2011

UTAH EDUCATIONAL SAVINGS PLAN AMENDMENTS

Chief Sponsor: Wayne L. Niederhauser
House Sponsor: Ronda Rudd Menlove

LONG TITLE

General Description:

This bill modifies provisions related to the Utah Educational Savings Plan.

Highlighted Provisions:

This bill:

- exempts Utah Educational Savings Plan funds from provisions of the State Money Management Act and establishes the authorized investments for the plan's program fund, administrative fund, and endowment fund;
- authorizes the Utah Higher Education Assistance Authority and its appointed board of directors to close certain public meetings or portions of public meetings for purposes of discussing fiduciary or commercial information;
- provides definitions;
- authorizes the plan to own institutional accounts in the plan to establish and administer scholarship programs or other college savings incentive programs;
- exempts the plan from the provisions of the Government Records Access and Management Act;
- authorizes the board of directors of the plan to establish advisory committees;
- modifies the information required to be sent from the Tax Commission to the plan when a taxpayer's individual income tax refund is contributed to Utah Educational Savings Plan accounts;
- establishes what financial information the plan shall provide to the Division of Finance for posting on the Utah Public Finance Website;
- authorizes the plan to publish materials and make transactions in languages other than English; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

51-7-2, as last amended by Laws of Utah 2007, Chapter 99
51-7-4, as last amended by Laws of Utah 2005, Chapters 71 and 178
52-4-205, as last amended by Laws of Utah 2010, Chapters 35, 60, and 239
53B-8a-102, as last amended by Laws of Utah 2010, Chapter 6
53B-8a-103, as last amended by Laws of Utah 2010, Chapter 6
53B-8a-105, as last amended by Laws of Utah 2010, Chapter 6
53B-8a-107, as last amended by Laws of Utah 2010, Chapter 6
53B-12-102, as enacted by Laws of Utah 1987, Chapter 167
59-1-403, as last amended by Laws of Utah 2010, Chapters 6 and 67
59-10-1313, as last amended by Laws of Utah 2010, Chapter 6
63A-3-402, as last amended by Laws of Utah 2009, Chapter 310
63G-1-201, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-2-103, as last amended by Laws of Utah 2010, Chapter 366
63G-2-301, as last amended by Laws of Utah 2009, Chapter 344
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

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

Section 1. Section 51-7-2 is amended to read:

51-7-2. Exemptions from chapter.

The following funds are exempt from this chapter:

(1) funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

(2) funds of the Workers' Compensation Fund;

(3) funds of the Utah State Retirement Board;

(4) funds of the Utah Housing Corporation;

(5) endowment funds of higher education institutions;

(6) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution; [~~and~~]

(7) the State Post-Retirement Benefits Trust Fund[~~.~~]; and

(8) the funds of the Utah Educational Savings Plan.

Section 2. Section 51-7-4 is amended to read:

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

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

instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

(a) funds assigned to the Utah State Retirement Board for investment under Section 49-11-302;

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

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

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

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

(c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;

(d) trust funds established by judicial order;

(e) funds of the Workers' Compensation Fund;

(f) funds of the Utah Housing Corporation; [~~and~~]

(g) endowment funds of higher education institutions[~~.~~]; and

(h) the funds of the Utah Educational Savings Plan.

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

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

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

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

Section 3. Section 52-4-205 is amended to read:

52-4-205. Purposes of closed meetings.

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(B);

(j) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404; [~~or~~]

(k) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102; or

[~~(k)~~] (l) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); and

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

(3) A public body may not interview a person applying to fill an elected position in a closed meeting.

Section 4. Section 53B-8a-102 is amended to read:

53B-8a-102. Definitions.

As used in this chapter:

(1) "Account agreement" means an agreement between an account owner and the Utah Educational Savings Plan entered into under this chapter.

(2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has entered into an account agreement under this chapter to save for the higher education costs on behalf of a beneficiary.

(3) "Administrative fund" means the money used to administer the Utah Educational Savings Plan.

(4) "Beneficiary" means the individual designated in an account agreement to benefit from the amount saved for higher education costs.

(5) "Board" means the board of directors of the Utah Educational Savings Plan which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.

(6) "Endowment fund" means the endowment fund established under Section 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.

(7) "Executive director" means the administrator appointed to administer and manage the Utah Educational Savings Plan.

(8) "Federally insured depository institution" means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation and the National Credit Union Administration.

[~~(8)~~] (9) "Higher education costs" means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.

[~~(9)~~] (10) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.

[~~(10)~~] (11) "Program fund" means the program fund created under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

[~~(11)~~] (12) "Qualified investment" means an amount invested in accordance with an account agreement established under this chapter.

[~~(12)~~] (13) "Tuition and fees" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Section 5. Section 53B-8a-103 is amended to read:

53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of plan -- Certain exemptions.

(1) There is created the Utah Educational Savings Plan, which may also be known and function as the Utah Educational Savings Plan Trust.

(2) The plan:

(a) is a non-profit, self-supporting agency that administers a public trust;

(b) shall administer the various programs, funds, trusts, plans, functions, duties, and obligations assigned to the plan:

(i) consistent with sound fiduciary principles; and

(ii) subject to review of the board; and

(c) shall be known as and managed as a qualified tuition program in compliance with Section 529, Internal Revenue Code, that is sponsored by the state.

(3) The plan may:

(a) make and enter into contracts necessary for the administration of the plan payable from plan moneys, including:

(i) contracts for goods and services; and

(ii) contracts to engage[~~: (A)~~] personnel, with demonstrated ability or expertise, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice; [~~and~~]

[~~(B) one or more investment advisors, registered under the Investment Advisers Act of 1940, with at least 5,000 advisory clients and at least $1,000,000,000 under management, to provide investment advice to the board with respect to the assets held in each account;~~]

(b) adopt a corporate seal and change and amend it from time to time;

(c) invest moneys within the program [~~fund:~~], administrative, and endowment funds in accordance with the provisions under Section 53B-8a-107;

[~~(i) (A) in any investments that are determined by the board to be appropriate; or~~]

[~~(B) in mutual funds registered under the Investment Company Act of 1940, consistent with the best interests of a designated beneficiary's higher education funding needs; and~~]

[~~(ii) that are in compliance with rules of the State Money Management Council applicable to gift funds;~~]

[~~(d) invest moneys within the endowment fund in any investments that are:~~]

[~~(i) determined by the board to be appropriate;~~]

[~~(ii) approved by the state treasurer; and~~]

[~~(iii) in compliance with rules of the State Money Management Council applicable to gift funds;~~]

[~~(e)~~] (d) enter into agreements with account owners, any institution of higher education, any

federal or state agency, or other entity as required to implement this chapter;

[~~(f)~~] (e) solicit and accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or the program fund;

[~~(g)~~] (f) make provision for the payment of costs of administration and operation of the plan;

[~~(h)~~] (g) carry out studies and projections in order to advise account owners regarding present and estimated future higher education costs and levels of financial participation in the plan required in order to enable account owners to achieve their educational funding objective;

[~~(i)~~] (h) participate in federal, state, local governmental, or private programs;

[~~(j)~~] (i) create public and private partnerships, including investment or management relationships with other 529 plans or entities;

[~~(k)~~] (j) promulgate, impose, and collect administrative fees and charges in connection with transactions of the plan, and provide for reasonable service charges;

[~~(l)~~] (k) procure insurance:

(i) against any loss in connection with the property, assets, or activities of the plan; and

(ii) indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the plan's board;

[~~(m)~~] (l) administer outreach efforts to:

(i) market and publicize the plan and its products to existing and prospective account owners; and

(ii) encourage economically challenged populations to save for post-secondary education;

[~~(n)~~] (m) adopt, trademark, and copyright names and materials for use in marketing and publicizing the plan and its products;

[~~(o)~~] (n) administer the funds of the plan;

[~~(p)~~] (o) sue and be sued in its own name; [~~and~~]

(p) own institutional accounts in the plan to establish and administer:

(i) scholarship programs; or

(ii) other college savings incentive programs, including programs designed to enhance the savings of low income account owners investing in the plan; and

(q) have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this chapter.

(4) (a) Except as provided in Subsection (4)(b), the plan is exempt from the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) (i) The annual audited financial statements of the plan described in Section 53B-8a-111 are public records.

(ii) Financial information that is provided by the plan to the Division of Finance and posted on the Utah Public Finance Website in accordance with Section 63A-3-402 is a public record.

Section 6. Section 53B-8a-105 is amended to read:

53B-8a-105. Powers and duties of board.

(1) The board has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the plan.

(2) The duties, responsibilities, funds, liabilities, and expenses of the board in oversight and governance of the plan shall be maintained separate and apart from the board's other duties, responsibilities, funds, liabilities, and expenses.

(3) The board shall make policies governing the:

(a) administration of the plan; and

(b) appointment and duties of the plan's executive director.

(4) (a) The board may appoint advisory committees to aid the board in fulfilling its duties and responsibilities.

(b) An advisory committee member may receive compensation and be reimbursed for reasonable expenses incurred in the performance of the member's official duties as determined by the board.

Section 7. Section 53B-8a-107 is amended to read:

53B-8a-107. Program, administrative, and endowment funds -- Investment and payments from funds.

(1) (a) The plan shall segregate money received by the plan into three funds, the program fund, the administrative fund, and the endowment fund.

(b) The plan, as approved by the board, may hold, deposit, and invest program fund, administrative fund, and endowment fund money in the following:

(i) the Public Treasurer's Investment Fund;

(ii) mutual funds, securities, or other investments registered with the United States Securities and Exchange Commission;

(iii) federally insured depository institutions;

(iv) stable value products, including guaranteed investment contracts, guaranteed interest contracts, and guaranteed insurance contracts; and

(v) any investments that are determined by the board to be appropriate and that would be authorized under:

(A) the provisions of Section 51-7-11; or

(B) rules of the State Money Management Council applicable to gift funds.

(2) Transfers may be made from the program fund to the administrative fund to pay operating costs:

(a) associated with administering the plan and as required under Sections 53B-8a-103 through 53B-8a-105; and

(b) as included in the budget approved by the board.

(3) (a) All money paid by account owners in connection with account agreements shall be deposited as received into separate accounts within the program fund which shall be invested and accounted for separately.

(b) Money accrued by account owners in the program fund may be used for:

(i) payments to any institution of higher education;

(ii) payments to the account owner or beneficiary;

(iii) [~~payments~~] transfers to another 529 plan; or

(iv) other expenditures or transfers made in accordance with the account agreement.

(4) (a) All money received by the plan from the proceeds of gifts and other endowments for the purposes of the plan shall be:

(i) deposited, according to the nature of the donation, as received into the endowment fund or the administrative fund; and

(ii) invested and accounted for separately.

(b) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership, or corporation to the plan for deposit to the endowment fund or the administrative fund is a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and is not included in the income of the donor for Utah tax purposes.

(c) The endowment fund or the administrative fund may be used to enhance the savings of low income account owners investing in the plan, for scholarships, or for other college savings incentive programs as approved by the board.

(d) Transfers may be made [~~from~~] between the endowment fund [~~to~~] and the administrative fund upon approval by the board.

(e) Endowment fund earnings not accruing to a beneficiary under an account agreement [~~or~~], not transferred to the administrative fund, or not otherwise approved by the board for expenditure, shall be reinvested in the endowment fund.

Section 8. Section 53B-12-102 is amended to read:

53B-12-102. Separation of duties, responsibilities, funds, liabilities, and expenses -- Appointment of board of directors -- No state or local debt -- Minors eligible for loans.

(1) As used in this section, "fiduciary or commercial information" means information:

(a) related to any subject if the disclosure of the information:

(i) would conflict with fiduciary obligations; or

(ii) is prohibited by insider trading provisions; or

(b) of a commercial nature, including information related to:

(i) account owners or borrowers;

(ii) demographic data;

(iii) contracts and related payments;

(iv) negotiations;

(v) proposals or bids;

(vi) investments;

(vii) the investment and management of funds;

(viii) fees and charges;

(ix) plan and program design;

(x) investment options and underlying investments offered to account owners;

(xi) marketing and outreach efforts;

(xii) lending criteria;

(xiii) the structure and terms of bonding;

(xiv) financial plans; or

(xv) reviews and audits, except the final report of the annual audit of financial statements required under Section 53B-8a-111.

[~~(1)~~] (2) The duties, responsibilities, funds, liabilities, and expenses of the board as the Utah Higher Education Assistance Authority shall be maintained separate and apart from its other duties, responsibilities, funds, liabilities, and expenses.

[~~(2)~~] (3) (a) In order to carry out the obligation of separation of functions required under Subsection [~~(1)~~] (2), the board may appoint a board of directors of the authority, and designate its chairman to govern and manage the authority.

(b) The board of directors consists of not less than five persons, not more than [~~2/3~~] two-thirds of whom may be members of the State Board of Regents.

(c) The board of directors reports to and serves at the pleasure of the State Board of Regents, and has all of the powers, duties, and responsibilities of the Utah Higher Education Assistance Authority except for those expressly retained by the State Board of Regents.

(4) All meetings of the Utah Higher Education Assistance Authority and its appointed board of directors shall be open to the public, except those meetings or portions of meetings that are closed as

authorized by Sections 52-4-204 and 52-4-205, including to discuss fiduciary or commercial information.

[~~(3)~~] (5) An obligation incurred under this chapter does not constitute a debt of the state or any of its political subdivisions.

[~~(4)~~] (6) (a) A person who would otherwise qualify for a loan guaranteed by the authority is not disqualified because that person is a minor.

(b) For the purpose of applying for, receiving, and repaying a loan, a minor has full legal capacity to act and has all the rights, powers, privileges, and obligations of a person of full age with respect to the loan.

Section 9. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding under:

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as requested by the executive secretary, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in

Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and Social Security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o), "office" means the:

(A) Office of the Legislative Fiscal Analyst; or

(B) Office of Legislative Research and General Counsel.

(ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii), the commission shall at the request of an office provide to the office all information:

(A) gained by the commission; and

(B) required to be attached to or included in returns filed with the commission.

(iii) (A) An office may not request and the commission may not provide to an office a person's:

(I) address;

(II) name;

(III) Social Security number; or

(IV) taxpayer identification number.

(B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(iii)(A).

(iv) An office may provide information received from the commission in accordance with this Subsection (3)(o) only:

(A) as:

(I) a fiscal estimate;

(II) fiscal note information; or

(III) statistical information; and

(B) if the information is classified to prevent the identification of a particular return.

(v) (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(o).

(B) An office may not provide to a person that requests information in accordance with Subsection (3)(o)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(o)(iv).

(p) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah State 911 Committee the information requested by the Utah State 911 Committee under Subsection 53-10-602(3).

(s) Notwithstanding Subsection (1), the commission [~~may~~] shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), the commission shall provide an eligibility worker with the Children's Health Insurance Program with the adjusted gross income of an individual if:

(i) an eligibility worker with the Children's Health Insurance Program requests the information from the Utah State Tax Commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Section 26-40-105.

(4) (a) Reports and returns shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):

(i) is not guilty of a class A misdemeanor; and

(ii) is not subject to:

(A) dismissal from office in accordance with Subsection (5)(b); or

(B) disqualification from holding public office in accordance with Subsection (5)(b).

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 10. Section 59-10-1313 is amended to read:

59-10-1313. Contribution to a Utah Educational Savings Plan account.

(1) (a) If a resident or nonresident individual is owed an individual income tax refund for the taxable year, the individual may designate on the resident or nonresident individual's income tax return a contribution to a Utah Educational Savings Plan account established under Title 53B, Chapter 8a, Utah Educational Savings Plan, in the amount of the entire individual income tax refund.

(b) If a resident or nonresident individual is not owed an individual income tax refund for the taxable year, the individual may not designate on the resident or nonresident's individual income tax return a contribution to a Utah Educational Savings Plan account.

(2) (a) The commission shall send the contribution to the Utah Educational Savings Plan along with the following information [~~requested by the Utah Educational Savings Plan, including the~~]:

(i) the amount of the individual income tax refund; and

(ii) the taxpayer's:

(A) name[~~,~~];

(B) Social Security number[~~,~~] or taxpayer identification number; and

(C) address.

(b) The commission shall provide the taxpayer's telephone number and number of dependents claimed, as requested, to the Utah Educational Savings Plan.

(c) If a contribution to a Utah Educational Savings Plan account is designated in a single

individual income tax return filed jointly by a husband and wife, the commission shall send the information described under Subsection (2)(a) or (b) for both the husband and wife to the Utah Educational Savings Plan.

(3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall deposit the contribution into the account.

(b) If the taxpayer owns more than one Utah Educational Savings Plan account, the Utah Educational Savings Plan shall allocate the contribution among the accounts in equal amounts.

(c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall send the taxpayer an account agreement.

(ii) If the taxpayer does not sign and return the account agreement by the date specified by the Utah Educational Savings Plan, the Utah Educational Savings Plan shall return the contribution to the taxpayer without any interest or earnings.

(4) For the purpose of determining interest on an overpayment or refund under Section 59-1-402, no interest accrues after the commission sends the contribution to the Utah Educational Savings Plan.

Section 11. Section 63A-3-402 is amended to read:

63A-3-402. Utah Public Finance Website -- Establishment and administration -- Records disclosure.

(1) There is created the Utah Public Finance Website to be administered by the Division of Finance with the technical assistance of the Department of Technology Services.

(2) The Utah Public Finance Website shall:

(a) permit Utah taxpayers to:

(i) view, understand, and track the use of taxpayer dollars by making public financial information available on the Internet for participating state entities' and participating local entities, using the Utah Public Finance Website; and

(ii) link to websites administered by participating local entities that do not use the Utah Public Finance Website for the purpose of providing participating local entities' public financial information as required by this part and by rule under Section 63A-3-404;

(b) allow a person who has Internet access to use the website without paying a fee;

(c) allow the public to search public financial information on the Utah Public Finance Website using those criteria established by the board;

(d) provide access to financial reports, financial audits, budgets, or other financial documents that are used to allocate, appropriate, spend, and account for the government funds, as may be established by rule under Section 63A-3-404;

(e) have a unique and simplified website address;

(f) be directly accessible via a link from the main page of the official state website; and

(g) include other links, features, or functionality that will assist the public in obtaining and reviewing public financial information, as may be established by rule under Section 63A-3-404.

(3) The division shall:

(a) establish and maintain the website, including the provision of equipment, resources, and personnel as is necessary;

(b) maintain an archive of all information posted to the website;

(c) coordinate and process the receipt and posting of public financial information from participating state entities;

(d) coordinate and regulate the posting of public financial information by participating local entities; and

(e) provide staff support for the advisory committee.

(4) (a) A participating state entity shall permit the public to view the participating entity's public financial information via the website, beginning with information that is generated not later than the fiscal year that begins July 1, 2008, except that public financial information for an institution of higher education shall be provided beginning with information generated for the fiscal year beginning July 1, 2009.

(b) Not later than May 15, 2009, the website shall:

(i) be operational; and

(ii) permit public access to participating state entities' public financial information, except as provided in Subsection (4)(c).

(c) An institution of higher education that is a participating state entity shall submit the entity's public financial information at a time allowing for inclusion on the website no later than May 15, 2010.

(5) (a) The Utah Educational Savings Plan, created in Section 53B-8a-103, shall provide the following financial information to the division for posting on the Utah Public Finance Website:

(i) administrative fund expense transactions from its general ledger accounting system; and

(ii) employee compensation information.

(b) The plan is not required to submit other financial information to the division, including:

(i) revenue transactions;

(ii) account owner transactions; and

(iii) fiduciary or commercial information, as defined in Section 53B-12-102.

[~~(5)~~] (6) A person who negligently discloses a record that is classified as private, protected, or

controlled by Title 63G, Chapter 2, Government Records Access and Management Act, is not criminally or civilly liable for an improper disclosure of the record if the record is disclosed solely as a result of the preparation or publication of the Utah Public Finance Website.

Section 12. Section 63G-1-201 is amended to read:

63G-1-201. Official state language.

(1) English is declared to be the official language of Utah.

(2) As the official language of this State, the English language is the sole language of the government, except as otherwise provided in this section.

(3) Except as provided in Subsection (4), all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English.

(4) Languages other than English may be used when required:

(a) by the United States Constitution, the Utah State Constitution, federal law, or federal regulation;

(b) by law enforcement or public health and safety needs;

(c) by public and higher education systems according to rules made by the State Board of Education and the State Board of Regents to comply with Subsection (5);

(d) in judicial proceedings, when necessary to insure that justice is served;

(e) to promote and encourage tourism and economic development, including the hosting of international events such as the Olympics; [~~and~~]

(f) by libraries to:

(i) collect and promote foreign language materials; and

(ii) provide foreign language services and activities[~~.~~]; and

(g) by the Utah Educational Savings Plan established under Title 53B, Chapter 8a, Utah Educational Savings Plan.

(5) The State Board of Education and the State Board of Regents shall make rules governing the use of foreign languages in the public and higher education systems that promote the following principles:

(a) non-English speaking children and adults should become able to read, write, and understand English as quickly as possible;

(b) foreign language instruction should be encouraged;

(c) formal and informal programs in English as a Second Language should be initiated, continued, and expanded; and

(d) public schools should establish communication with non-English speaking parents of children within their systems, using a means designed to maximize understanding when necessary, while encouraging those parents who do not speak English to become more proficient in English.

(6) Unless exempted by Subsection (4), all state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the General Fund.

(a) Each state agency that has state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall:

(i) notify the Division of Finance that those monies exist and the amount of those monies; and

(ii) return those monies to the Division of Finance.

(b) The Division of Finance shall account for those monies and inform the Legislature of the existence and amount of those monies at the beginning of the Legislature's annual general session.

(c) The Legislature may appropriate any monies received under this section to the State School Board for use in English as a Second Language programs.

(7) Nothing in this section affects the ability of government employees, private businesses, nonprofit organizations, or private individuals to exercise their rights under:

(a) the First Amendment of the United States Constitution; and

(b) Utah Constitution, Article 1, Sections 1 and 15.

(8) If any provision of this section, or the application of any such provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

Section 13. Section 63G-2-103 is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy,

efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an

individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

(20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii); or

(xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section 53B-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(29) "State archivist" means the director of the state archives.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 14. Section 63G-2-301 is amended to read:

63G-2-301. Records that must be disclosed.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63G-2-305(16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or

criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; [~~and~~]

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63G-2-302(1)(i)[~~.~~]; and

(m) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used

to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 15. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose

information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,

retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

[~~(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;~~]

[~~(b) proposals submitted to the Utah Educational Savings Plan; and~~]

[~~(c) contracts entered into by the Utah Educational Savings Plan and the related payments;~~]

[~~(56)~~] (55) records contained in the Management Information System created in Section 62A-4a-1003;

[~~(57)~~] (56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

[~~(58)~~] (57) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

[~~(59)~~] (58) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; and

[~~(60)~~] (59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality.

Section 16. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 47
S. B. 146
Passed March 2, 2011
Approved March 16, 2011
Effective May 11, 2011

IMPACT FEE AMENDMENTS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad J. Galvez

LONG TITLE

General Description:

This bill recodifies the Impact Fees Act.

Highlighted Provisions:

This bill:

- repeals Title 11, Chapter 36, Impact Fees Act, and replaces it with Title 11, Chapter 36a, Impact Fees Act, including:
  - enacts general provisions;
  - enacts provisions related to an impact fee;
  - enacts provisions regulating the establishment of an impact fee;
  - enacts provisions related to an impact fee enactment;
  - enacts notice provisions;
  - enacts provisions regulating the accounting of and expenditure of an impact fee; and
  - enacts provisions related to challenging an impact fee; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 11, 2011.

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
10-9a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330
10-9a-510, as last amended by Laws of Utah 2010, Chapter 203
13-43-205, as enacted by Laws of Utah 2006, Chapter 258
13-43-206, as last amended by Laws of Utah 2010, Chapter 203
17-27a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
17-27a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330
17-27a-509, as last amended by Laws of Utah 2010, Chapter 203
17B-1-111, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-118, as last amended by Laws of Utah 2010, Chapter 203
17B-1-643, as last amended by Laws of Utah 2009, First Special Session, Chapter 5
17B-2a-1004, as enacted by Laws of Utah 2007, Chapter 329

ENACTS:

11-36a-101, Utah Code Annotated 1953
11-36a-102, Utah Code Annotated 1953
11-36a-201, Utah Code Annotated 1953
11-36a-202, Utah Code Annotated 1953
11-36a-203, Utah Code Annotated 1953
11-36a-204, Utah Code Annotated 1953
11-36a-205, Utah Code Annotated 1953
11-36a-301, Utah Code Annotated 1953
11-36a-302, Utah Code Annotated 1953
11-36a-303, Utah Code Annotated 1953
11-36a-304, Utah Code Annotated 1953
11-36a-305, Utah Code Annotated 1953
11-36a-306, Utah Code Annotated 1953
11-36a-401, Utah Code Annotated 1953
11-36a-402, Utah Code Annotated 1953
11-36a-403, Utah Code Annotated 1953
11-36a-501, Utah Code Annotated 1953
11-36a-502, Utah Code Annotated 1953
11-36a-503, Utah Code Annotated 1953
11-36a-504, Utah Code Annotated 1953
11-36a-601, Utah Code Annotated 1953
11-36a-602, Utah Code Annotated 1953
11-36a-603, Utah Code Annotated 1953
11-36a-701, Utah Code Annotated 1953
11-36a-702, Utah Code Annotated 1953
11-36a-703, Utah Code Annotated 1953
11-36a-704, Utah Code Annotated 1953
11-36a-705, Utah Code Annotated 1953

REPEALS:

11-36-101, as enacted by Laws of Utah 1995, First Special Session, Chapter 11
11-36-102 (Superseded 05/11/11), as last amended by Laws of Utah 2009, Chapters 181, 286, and 323
11-36-102 (Effective 05/11/11), as last amended by Laws of Utah 2010, Chapter 203
11-36-201, as last amended by Laws of Utah 2010, Chapters 203 and 315
11-36-202, as last amended by Laws of Utah 2010, Chapter 315
11-36-301, as last amended by Laws of Utah 2009, Chapter 323
11-36-302, as last amended by Laws of Utah 2009, Chapter 181
11-36-303, as enacted by Laws of Utah 1995, First Special Session, Chapter 11
11-36-401, as last amended by Laws of Utah 2010, Chapter 378
11-36-401.5, as enacted by Laws of Utah 2009, Chapters 181 and 286
11-36-402, as last amended by Laws of Utah 2008, Chapters 3 and 382
11-36-501, as last amended by Laws of Utah 2007, Chapter 329

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

Section 1. Section 10-9a-103 is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (10)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (10)(a)(i).

(11) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(15) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(17) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

(19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(21) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(22) "Land use application" means an application required by a municipality's land use ordinance.

(23) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(24) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(25) "Land use permit" means a permit issued by a land use authority.

(26) "Legislative body" means the municipal council.

(27) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(28) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(29) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(31) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(32) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(33) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

(34) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(35) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

(36) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(37) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(38) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(39) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(40) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(41) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(42) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(43) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

(44) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(45) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(46) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(47) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(48) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(49) "State" includes any department, division, or agency of the state.

(50) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(51) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into

two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (51)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (51) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(52) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(53) "Unincorporated" means the area outside of the incorporated area of a city or town.

(54) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(55) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-305 is amended to read:

10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a municipality located within the boundaries of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from municipal land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A municipality located within the boundaries of a county of the first class may not, through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the municipality prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a municipality's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a municipality may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a municipality may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, municipal building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter [~~36~~] 36a, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections [~~11-36-102(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee listed in Subsection 10-9a-510(5);

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 10-9a-304.

Section 3. Section 10-9a-510 is amended to read:

10-9a-510. Limit on fees -- Requirement to itemize fees.

(1) A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the municipality charges for a building permit fee for that building.

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal fee for reviewing and approving identical plans.

(3) A municipality may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the municipal water, sewer, storm water, power, or other utility system.

(4) A municipality may not impose or collect:

(a) a land use application fee that exceeds the reasonable cost of processing the application; or

(b) an inspection or review fee that exceeds the reasonable cost of performing the inspection or review.

(5) Upon the request of an applicant or an owner of residential property, the municipality shall itemize each fee that the municipality imposes on the applicant or on the residential property, respectively, showing the basis of each calculation for each fee imposed.

(6) A municipality may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection [~~11-36-102(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection [~~11-36-202(2)(b)~~] 11-36a-402(2).

Section 4. Section 11-36a-101 is enacted to read:

CHAPTER 36a. IMPACT FEES ACT

Part 1. General Provisions

11-36a-101. Title.

This chapter is known as the "Impact Fees Act."

Section 5. Section 11-36a-102 is enacted to read:

11-36a-102. Definitions.

As used in this chapter:

(1) (a) "Affected entity" means each county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

(i) whose services or facilities are likely to require expansion or significant modification because of the facilities proposed in the proposed impact fee facilities plan; or

(ii) that has filed with the local political subdivision or private entity a copy of the general or long-range plan of the county, municipality, local district, special service district, school district, interlocal cooperation entity, or specified public utility.

(b) "Affected entity" does not include the local political subdivision or private entity that is required under Section 11-36a-501 to provide notice.

(2) "Charter school" includes:

(a) an operating charter school;

(b) an applicant for a charter school whose application has been approved by a chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(3) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

(4) "Development approval" means:

(a) except as provided in Subsection (4)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity;

(b) development activity, for a public entity that may develop without written authorization from a local political subdivision;

(c) a written authorization from a public water supplier, as defined in Section 73-1-4, or a private water company:

(i) to reserve or provide:

(A) a water right;

(B) a system capacity; or

(C) a distribution facility; or

(ii) to deliver for a development activity:

(A) culinary water; or

(B) irrigation water; or

(d) a written authorization from a sanitary sewer authority, as defined in Section 10-9a-103:

(i) to reserve or provide:

(A) sewer collection capacity; or

(B) treatment capacity; or

(ii) to provide sewer service for a development activity.

(5) "Enactment" means:

(a) a municipal ordinance, for a municipality;

(b) a county ordinance, for a county; and

(c) a governing board resolution, for a local district, special service district, or private entity.

(6) "Encumber" means:

(a) a pledge to retire a debt; or

(b) an allocation to a current purchase order or contract.

(7) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility system of a municipality, county, local district, special service district, or private entity.

(8) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure.

(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

(9) "Impact fee analysis" means the written analysis of each impact fee required by Section 11-36a-303.

(10) "Impact fee facilities plan" means the plan required by Section 11-36a-301.

(11) (a) "Local political subdivision" means a county, a municipality, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(b) "Local political subdivision" does not mean a school district, whose impact fee activity is governed by Section 53A-20-100.5.

(12) "Private entity" means an entity with private ownership that provides culinary water that is required to be used as a condition of development.

(13) (a) "Project improvements" means site improvements and facilities that are:

(i) planned and designed to provide service for development resulting from a development activity;

(ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity; and

(iii) not identified or reimbursed as a system improvement.

(b) "Project improvements" does not mean system improvements.

(14) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

(15) "Public facilities" means only the following impact fee facilities that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity:

(a) water rights and water supply, treatment, and distribution facilities;

(b) wastewater collection and treatment facilities;

(c) storm water, drainage, and flood control facilities;

(d) municipal power facilities;

(e) roadway facilities;

(f) parks, recreation facilities, open space, and trails;

(g) public safety facilities; or

(h) environmental mitigation as provided in Section 11-36a-205.

(16) (a) "Public safety facility" means:

(i) a building constructed or leased to house police, fire, or other public safety entities; or

(ii) a fire suppression vehicle costing in excess of $500,000.

(b) "Public safety facility" does not mean a jail, prison, or other place of involuntary incarceration.

(17) (a) "Roadway facilities" means a street or road that has been designated on an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all necessary appurtenances.

(b) "Roadway facilities" includes associated improvements to a federal or state roadway only when the associated improvements:

(i) are necessitated by the new development; and

(ii) are not funded by the state or federal government.

(c) "Roadway facilities" does not mean federal or state roadways.

(18) (a) "Service area" means a geographic area designated by a local political subdivision on the basis of sound planning or engineering principles in which a defined set of public facilities provides service within the area.

(b) "Service area" may include the entire local political subdivision.

(19) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(20) (a) "System improvements" means:

(i) existing public facilities that are:

(A) identified in the impact fee analysis under Section 11-36a-304; and

(B) designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in the impact fee analysis under Section 11-36a-304 that are intended to provide services to service areas within the community at large.

(b) "System improvements" does not mean project improvements.

Section 6. Section 11-36a-201 is enacted to read:

Part 2. Impact Fees

11-36a-201. Impact fees.

(1) A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.

(2) A local political subdivision and private entity may establish impact fees only for those public facilities defined in Section 11-36a-102.

(3) Nothing in this chapter may be construed to repeal or otherwise eliminate an impact fee in effect on the effective date of this chapter that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this chapter.

Section 7. Section 11-36a-202 is enacted to read:

11-36a-202. Prohibitions on impact fees.

(1) A local political subdivision or private entity may not:

(a) impose an impact fee to:

(i) cure deficiencies in a public facility serving existing development;

(ii) raise the established level of service of a public facility serving existing development;

(iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or

(iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:

(A) generally accepted cost accounting practices; and

(B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

(b) delay the construction of a school or charter school because of a dispute with the school or charter school over impact fees; or

(c) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

(2) (a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:

(i) on residential components of development to pay for a public safety facility that is a fire suppression vehicle;

(ii) on a school district or charter school for a park, recreation facility, open space, or trail;

(iii) on a school district or charter school unless:

(A) the development resulting from the school district's or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and

(B) the impact fee is calculated to cover only the school district's or charter school's proportionate share of the cost of those additional system improvements; or

(iv) to the extent that the impact fee includes a component for a law enforcement facility, on development activity for:

(A) the Utah National Guard;

(B) the Utah Highway Patrol; or

(C) a state institution of higher education that has its own police force.

(b) (i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:

(A) the school is intended to replace another school, whether on the same or a different parcel;

(B) the new school creates no greater demand or need for public facilities than the school or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and

(C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.

(ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)(i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

(c) Notwithstanding any other provision of this chapter, a political subdivision or private entity may impose an impact fee for a road facility on the state only if and to the extent that:

(i) the state's development causes an impact on the road facility; and

(ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government.

(3) Notwithstanding any other provision of this chapter, a local political subdivision may impose and collect impact fees on behalf of a school district if authorized by Section 53A-20-100.5.

Section 8. Section 11-36a-203 is enacted to read:

11-36a-203. Private entity assessment of impact fees -- Charges for water rights, physical infrastructure -- Notice -- Audit.

(1) A private entity:

(a) shall comply with the requirements of this chapter before imposing an impact fee; and

(b) except as otherwise specified in this chapter, is subject to the same requirements of this chapter as a local political subdivision.

(2) A private entity may only impose a charge for water rights or physical infrastructure necessary to provide water or sewer facilities by imposing an impact fee.

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

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

Section 9. Section 11-36a-204 is enacted to read:

11-36a-204. Other names for impact fees.

(1) A fee that meets the definition of impact fee under Section 11-36a-102 is an impact fee subject to this chapter, regardless of what term the local political subdivision or private entity uses to refer to the fee.

(2) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section 11-36a-102 by referring to the fee by another name.

Section 10. Section 11-36a-205 is enacted to read:

11-36a-205. Environmental mitigation impact fees.

Notwithstanding the requirements and prohibitions of this chapter, a local political subdivision may impose and assess an impact fee for environmental mitigation when:

(1) the local political subdivision has formally agreed to fund a Habitat Conservation Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq. or other state or federal environmental law or regulation;

(2) the impact fee bears a reasonable relationship to the environmental mitigation required by the Habitat Conservation Plan; and

(3) the legislative body of the local political subdivision adopts an ordinance or resolution:

(a) declaring that an impact fee is required to finance the Habitat Conservation Plan;

(b) establishing periodic sunset dates for the impact fee; and

(c) requiring the legislative body to:

(i) review the impact fee on those sunset dates;

(ii) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and

(iii) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

Section 11. Section 11-36a-301 is enacted to read:

Part 3. Establishing an Impact Fee

11-36a-301. Impact fee facilities plan.

(1) Before imposing an impact fee, each local political subdivision or private entity shall, except as provided in Subsection (3), prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new development activity.

(2) A municipality or county need not prepare a separate impact fee facilities plan if the general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements required by Section 11-36a-302.

(3) (a) A local political subdivision with a population, or serving a population, of less than 5,000 as of the last federal census need not comply with the impact fee facilities plan requirements of this part, but shall ensure that:

(i) the impact fees that the local political subdivision imposes are based upon a reasonable plan; and

(ii) each applicable notice required by this chapter is given.

(b) Subsection (3)(a) does not apply to a private entity.

Section 12. Section 11-36a-302 is enacted to read:

11-36a-302. Impact fee facilities plan requirements -- Limitations -- School district or charter school.

(1) An impact fee facilities plan shall identify:

(a) demands placed upon existing public facilities by new development activity; and

(b) the proposed means by which the local political subdivision will meet those demands.

(2) In preparing an impact fee facilities plan, each local political subdivision shall generally consider all revenue sources, including impact fees and anticipated dedication of system improvements, to finance the impacts on system improvements.

(3) A local political subdivision or private entity may only impose impact fees on development activities when the local political subdivision's or private entity's plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future, in comparison to the benefits already received and yet to be received.

(4) (a) Subject to Subsection (4)(c), the impact fee facilities plan shall include a public facility for which an impact fee may be charged or required for a school district or charter school if the local

political subdivision is aware of the planned location of the school district facility or charter school:

(i) through the planning process; or

(ii) after receiving a written request from a school district or charter school that the public facility be included in the impact fee facilities plan.

(b) If necessary, a local political subdivision or private entity shall amend the impact fee facilities plan to reflect a public facility described in Subsection (4)(a).

(c) (i) In accordance with Subsections 10-9a-305(4) and 17-27a-305(4), a local political subdivision may not require a school district or charter school to participate in the cost of any roadway or sidewalk.

(ii) Notwithstanding Subsection (4)(c)(i), if a school district or charter school agrees to build a roadway or sidewalk, the roadway or sidewalk shall be included in the impact fee facilities plan if the local jurisdiction has an impact fee facilities plan for roads and sidewalks.

Section 13. Section 11-36a-303 is enacted to read:

11-36a-303. Impact fee analysis.

(1) Subject to the notice requirements of Section 11-36a-504, each local political subdivision or private entity intending to impose an impact fee shall prepare a written analysis of each impact fee.

(2) Each local political subdivision or private entity that prepares an impact fee analysis under Subsection (1) shall also prepare a summary of the impact fee analysis designed to be understood by a lay person.

Section 14. Section 11-36a-304 is enacted to read:

11-36a-304. Impact fee analysis requirements.

(1) An impact fee analysis shall:

(a) identify the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated development activity;

(b) identify the anticipated impact on system improvements required by the anticipated development activity to maintain the established level of service for each public facility;

(c) subject to Subsection (2), demonstrate how the anticipated impacts described in Subsections (1)(a) and (b) are reasonably related to the anticipated development activity;

(d) estimate the proportionate share of:

(i) the costs for existing capacity that will be recouped; and

(ii) the costs of impacts on system improvements that are reasonably related to the new development activity; and

(e) based on the requirements of this chapter, identify how the impact fee was calculated.

(2) In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new development activity, the local political subdivision or private entity, as the case may be, shall identify, if applicable:

(a) the cost of each existing public facility that has excess capacity to serve the anticipated development resulting from the new development activity;

(b) the cost of system improvements for each public facility;

(c) other than impact fees, the manner of financing for each public facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;

(d) the relative extent to which development activity will contribute to financing the excess capacity of and system improvements for each existing public facility, by such means as user charges, special assessments, or payment from the proceeds of general taxes;

(e) the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future;

(f) the extent to which the development activity is entitled to a credit against impact fees because the development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed development;

(g) extraordinary costs, if any, in servicing the newly developed properties; and

(h) the time-price differential inherent in fair comparisons of amounts paid at different times.

Section 15. Section 11-36a-305 is enacted to read:

11-36a-305. Calculating impact fees.

(1) In calculating an impact fee, a local political subdivision or private entity may include:

(a) the construction contract price;

(b) the cost of acquiring land, improvements, materials, and fixtures;

(c) the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and

(d) for a political subdivision, debt service charges, if the political subdivision might use impact fees as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements.

(2) In calculating an impact fee, each local political subdivision or private entity shall base amounts calculated under Subsection (1) on realistic estimates, and the assumptions

underlying those estimates shall be disclosed in the impact fee analysis.

Section 16. Section 11-36a-306 is enacted to read:

11-36a-306. Certification of impact fee analysis.

(1) An impact fee facilities plan shall include a written certification from the person or entity that prepares the impact fee facilities plan that states the following:"I certify that the attached impact fee facilities plan:1. includes only the costs of public facilities that are:

a. allowed under the Impact Fees Act; and

b. actually incurred; or

c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;2. does not include:

a. costs of operation and maintenance of public facilities;

b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and3. complies in each and every relevant respect with the Impact Fees Act."

(2) An impact fee analysis shall include a written certification from the person or entity that prepares the impact fee analysis which states as follows:"I certify that the attached impact fee analysis:1. includes only the costs of public facilities that are:

a. allowed under the Impact Fees Act; and

b. actually incurred; or

c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;2. does not include:

a. costs of operation and maintenance of public facilities;

b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;3. offsets costs with grants or other alternate sources of payment; and4. complies in each and every relevant respect with the Impact Fees Act."

Section 17. Section 11-36a-401 is enacted to read:

Part 4. Enactment of Impact Fees

11-36a-401. Impact fee enactment.

(1) (a) A local political subdivision or private entity wishing to impose impact fees shall pass an impact fee enactment in accordance with Section 11-36a-402.

(b) An impact fee imposed by an impact fee enactment may not exceed the highest fee justified by the impact fee analysis.

(2) An impact fee enactment may not take effect until 90 days after the day on which the impact fee enactment is approved.

Section 18. Section 11-36a-402 is enacted to read:

11-36a-402. Required provisions of impact fee enactment.

(1) A local political subdivision or private entity shall ensure, in addition to the requirements described in Subsections (2) and (3), that an impact fee enactment contains:

(a) a provision establishing one or more service areas within which the local political subdivision or private entity calculates and imposes impact fees for various land use categories;

(b) (i) a schedule of impact fees for each type of development activity that specifies the amount of the impact fee to be imposed for each type of system improvement; or

(ii) the formula that the local political subdivision or private entity, as the case may be, will use to calculate each impact fee;

(c) a provision authorizing the local political subdivision or private entity, as the case may be, to adjust the standard impact fee at the time the fee is charged to:

(i) respond to:

(A) unusual circumstances in specific cases; or

(B) a request for a prompt and individualized impact fee review for the development activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected; and

(ii) ensure that the impact fees are imposed fairly; and

(d) a provision governing calculation of the amount of the impact fee to be imposed on a particular development that permits adjustment of the amount of the impact fee based upon studies and data submitted by the developer.

(2) A local political subdivision or private entity shall ensure that an impact fee enactment allows a developer, including a school district or a charter school, to receive a credit against or proportionate reimbursement of an impact fee if the developer:

(a) dedicates land for a system improvement;

(b) builds and dedicates some or all of a system improvement; or

(c) dedicates a public facility that the local political subdivision or private entity and the developer agree will reduce the need for a system improvement.

(3) A local political subdivision or private entity shall include a provision in an impact fee enactment that requires a credit against impact fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities:

(a) are system improvements; or

(b) (i) are dedicated to the public; and

(ii) offset the need for an identified system improvement.

Section 19. Section 11-36a-403 is enacted to read:

11-36a-403. Other provisions of impact fee enactment.

(1) A local political subdivision or private entity may include a provision in an impact fee enactment that:

(a) provides an impact fee exemption for:

(i) development activity attributable to:

(A) low income housing;

(B) the state;

(C) subject to Subsection (2), a school district; or

(D) subject to Subsection (2), a charter school; or

(ii) other development activity with a broad public purpose; and

(b) except for an exemption under Subsection (1)(a)(i)(A), establishes one or more sources of funds other than impact fees to pay for that development activity.

(2) An impact fee enactment that provides an impact fee exemption for development activity attributable to a school district or charter school shall allow either a school district or a charter school to qualify for the exemption on the same basis.

(3) An impact fee enactment that repeals or suspends the collection of impact fees is exempt from the notice requirements of Section 11-36a-504.

Section 20. Section 11-36a-501 is enacted to read:

Part 5. Notice

11-36a-501. Notice of intent to prepare an impact fee facilities plan.

(1) Before preparing or amending an impact fee facilities plan, a local political subdivision or private entity shall provide written notice of its intent to prepare or amend an impact fee facilities plan.

(2) A notice required under Subsection (1) shall:

(a) indicate that the local political subdivision or private entity intends to prepare or amend an impact fee facilities plan;

(b) describe or provide a map of the geographic area where the proposed impact fee facilities will be located; and

(c) subject to Subsection (3), be posted on the Utah Public Notice Website created under Section 63F-1-701.

(3) For a private entity required to post notice on the Utah Public Notice Website under Subsection (2)(c):

(a) the private entity shall give notice to the general purpose local government in which the private entity's private business office is located; and

(b) the general purpose local government described in Subsection (3)(a) shall post the notice on the Utah Public Notice Website.

Section 21. Section 11-36a-502 is enacted to read:

11-36a-502. Notice to adopt or amend an impact fee facilities plan.

(1) If a local political subdivision chooses to prepare an independent impact fee facilities plan rather than include an impact fee facilities element in the general plan in accordance with Section 11-36a-301, the local political subdivision shall, before adopting or amending the impact fee facilities plan:

(a) give public notice, in accordance with Subsection (2), of the plan or amendment at least 10 days before the day on which the public hearing described in Subsection (1)(d) is scheduled;

(b) make a copy of the plan or amendment, together with a summary designed to be understood by a lay person, available to the public;

(c) place a copy of the plan or amendment and summary in each public library within the local political subdivision; and

(d) hold a public hearing to hear public comment on the plan or amendment.

(2) With respect to the public notice required under Subsection (1)(a):

(a) each municipality shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

(b) each county shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections 17-27a-205 and 17-27a-801 and Subsection 17-27a-502(2); and

(c) each local district, special service district, and private entity shall comply with the notice and

hearing requirements of, and receive the protections of, Section 17B-1-111.

(3) Nothing contained in this section or Section 11-36a-503 may be construed to require involvement by a planning commission in the impact fee facilities planning process.

Section 22. Section 11-36a-503 is enacted to read:

11-36a-503. Notice of preparation of an impact fee analysis.

(1) Before preparing or contracting to prepare an impact fee analysis, each local political subdivision or, subject to Subsection (2), private entity shall post a public notice on the Utah Public Notice Website created under Section 63F-1-701.

(2) For a private entity required to post notice on the Utah Public Notice Website under Subsection (1):

(a) the private entity shall give notice to the general purpose local government in which the private entity's primary business is located; and

(b) the general purpose local government described in Subsection (2)(a) shall post the notice on the Utah Public Notice Website.

Section 23. Section 11-36a-504 is enacted to read:

11-36a-504. Notice of intent to adopt impact fee enactment -- Hearing -- Protections.

(1) Before adopting an impact fee enactment:

(a) a municipality legislative body shall:

(i) comply with the notice requirements of Section 10-9a-205 as if the impact fee enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 10-9a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 10-9a-801 as if the impact fee were a land use ordinance;

(b) a county legislative body shall:

(i) comply with the notice requirements of Section 17-27a-205 as if the impact fee enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 17-27a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 17-27a-801 as if the impact fee were a land use ordinance;

(c) a local district or special service district shall:

(i) comply with the notice and hearing requirements of Section 17B-1-111; and

(ii) receive the protections of Section 17B-1-111;

(d) a local political subdivision shall at least 10 days before the day on which a public hearing is scheduled in accordance with this section:

(i) make a copy of the impact fee enactment available to the public; and

(ii) post notice of the local political subdivision's intent to enact or modify the impact fee, specifying the type of impact fee being enacted or modified, on the Utah Public Notice Website created under Section 63F-1-701; and

(e) a local political subdivision shall submit a copy of the impact fee analysis and a copy of the summary of the impact fee analysis prepared in accordance with Section 11-36a-303 on its website or to each public library within the local political subdivision.

(2) Subsection (1)(a) or (b) may not be construed to require involvement by a planning commission in the impact fee enactment process.

Section 24. Section 11-36a-601 is enacted to read:

Part 6. Impact Fee Proceeds

11-36a-601. Accounting of impact fees.

A local political subdivision that collects an impact fee shall:

(1) establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected;

(2) deposit a receipt for an impact fee in the appropriate ledger account established under Subsection (1);

(3) retain the interest earned on each fund or ledger account in the fund or ledger account;

(4) at the end of each fiscal year, prepare a report on each fund or ledger account showing:

(a) the source and amount of all money collected, earned, and received by the fund or ledger account; and

(b) each expenditure from the fund or ledger account; and

(5) produce a report that:

(a) identifies impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted, and the projected schedule for expenditure;

(b) is in a format developed by the state auditor;

(c) is certified by the local political subdivision's chief financial officer; and

(d) is transmitted annually to the state auditor.

Section 25. Section 11-36a-602 is enacted to read:

11-36a-602. Expenditure of impact fees.

(1) A local political subdivision may expend impact fees only for a system improvement:

(a) identified in the impact fee facilities plan; and

(b) for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall expend or encumber the impact fees for a permissible use within six years of their receipt.

(b) A local political subdivision may hold the fees for longer than six years if it identifies, in writing:

(i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

Section 26. Section 11-36a-603 is enacted to read:

11-36a-603. Refunds.

A local political subdivision shall refund any impact fee paid by a developer, plus interest earned, when:

(1) the developer does not proceed with the development activity and has filed a written request for a refund;

(2) the fee has not been spent or encumbered; and

(3) no impact has resulted.

Section 27. Section 11-36a-701 is enacted to read:

Part 7. Challenges

11-36a-701. Impact fee challenge.

(1) A person or an entity residing in or owning property within a service area, or an organization, association, or a corporation representing the interests of persons or entities owning property within a service area, has standing to file a declaratory judgment action challenging the validity of an impact fee.

(2) (a) A person or an entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the impact fee.

(b) Within two weeks after the receipt of the request for information under Subsection (2)(a), the local political subdivision shall provide the person or entity with the impact fee analysis, the impact fee facilities plan, and any other relevant information relating to the impact fee.

(3) (a) Subject to the time limitations described in Section 11-36a-702 and procedures set forth in Section 11-36a-703, a person or an entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) subject to Subsection (3)(b)(i) and except as provided in Subsection (3)(b)(ii), whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (3)(c), the impact fee.

(b) (i) The sole remedy for a challenge under Subsection (3)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.

(ii) The protections given to a municipality under Section 10-9a-801 and to a county under Section 17-27a-801 do not apply in a challenge under Subsection (3)(a)(i)(A).

(c) The sole remedy for a challenge under Subsection (3)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

(4) (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory opinion under Section 13-43-205 is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion:

(i) the substantially prevailing party on that cause of action:

(A) may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and

(B) shall be refunded an impact fee held to be in violation of this chapter, based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee; and

(ii) in accordance with Section 13-43-206, a government entity shall refund an impact fee held to be in violation of this chapter to the person who was in record title of the property on the day on which the impact fee for the property was paid if:

(A) the impact fee was paid on or after the day on which the advisory opinion on the impact fee was issued but before the day on which the final court ruling on the impact fee is issued; and

(B) the person described in Subsection (3)(a)(ii) requests the impact fee refund from the government entity within 30 days after the day on which the court issued the final ruling on the impact fee.

(b) A government entity subject to Subsection (3)(a)(ii) shall refund the impact fee based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee.

(c) Subsection (4) may not be construed to create a new cause of action under land use law.

(d) Subsection (3)(a) does not apply unless the resolution described in Subsection (3)(a) is final.

Section 28. Section 11-36a-702 is enacted to read:

11-36a-702. Time limitations.

(1) A person or an entity that initiates a challenge under Subsection 11-36a-701(3)(a) may not initiate that challenge unless it is initiated within:

(a) for a challenge under Subsection 11-36a-701(3)(a)(i)(A), 30 days after the day on which the person or entity pays the impact fee;

(b) for a challenge under Subsection 11-36a-701(3)(a)(i)(B), 180 days after the day on which the person or entity pays the impact fee; or

(c) for a challenge under Subsection 11-36a-701(3)(a)(ii), one year after the day on which the person or entity pays the impact fee.

(2) The deadline to file an action in district court is tolled from the date that a challenge is filed using an administrative appeals procedure described in Section 11-36a-703 until 30 days after the day on which a final decision is rendered in the administrative appeals procedure.

Section 29. Section 11-36a-703 is enacted to read:

11-36a-703. Procedures for challenging an impact fee.

(1) (a) A local political subdivision may establish, by ordinance or resolution, an administrative appeals procedure to consider and decide a challenge to an impact fee.

(b) If the local political subdivision establishes an administrative appeals procedure, the local political subdivision shall ensure that the procedure includes a requirement that the local political subdivision make its decision no later than 30 days after the day on which the challenge to the impact fee is filed.

(2) A challenge under Subsection 11-36a-701(3)(a) is initiated by filing:

(a) if the local political subdivision has established an administrative appeals procedure under Subsection (1), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;

(b) a request for arbitration as provided in Section 11-36a-705; or

(c) an action in district court.

(3) The sole remedy for a successful challenge under Subsection 11-36a-701(1), which determines that an impact fee process was invalid, or an impact fee is in excess of the fee allowed under this act, is a declaration that, until the local political subdivision or private entity enacts a new impact fee study, from the date of the decision forward, the entity may charge an impact fee only as the court has determined would have been appropriate if it had been properly enacted.

(4) Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1) may not be construed as requiring a person or an entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1).

(5) The judge may award reasonable attorney fees and costs to the prevailing party in an action brought under this section.

(6) This chapter may not be construed as restricting or limiting any rights to challenge impact fees that were paid before the effective date of this chapter.

Section 30. Section 11-36a-704 is enacted to read:

11-36a-704. Mediation.

(1) In addition to the methods of challenging an impact fee under Section 11-36a-701, a specified public agency may require a local political subdivision or private entity to participate in mediation of any applicable impact fee.

(2) To require mediation, the specified public agency shall submit a written request for mediation to the local political subdivision or private entity.

(3) The specified public agency may submit a request for mediation under this section at any time, but no later than 30 days after the day on which an impact fee is paid.

(4) Upon the submission of a request for mediation under this section, the local political subdivision or private entity shall:

(a) cooperate with the specified public agency to select a mediator; and

(b) participate in the mediation process.

Section 31. Section 11-36a-705 is enacted to read:

11-36a-705. Arbitration.

(1) A person or entity intending to challenge an impact fee under Section 11-36a-703 shall file a written request for arbitration with the local political subdivision within the time limitation described in Section 11-36a-702 for the applicable type of challenge.

(2) If a person or an entity files a written request for arbitration under Subsection (1), an arbitrator or arbitration panel shall be selected as follows:

(a) the local political subdivision and the person or entity filing the request may agree on a single arbitrator within 10 days after the day on which the request for arbitration is filed; or

(b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an arbitration panel shall be created with the following members:

(i) each party shall select an arbitrator within 20 days after the date the request is filed; and

(ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.

(3) The arbitration panel shall hold a hearing on the challenge no later than 30 days after the day on which:

(a) the single arbitrator is agreed on under Subsection (2)(a); or

(b) the two arbitrators are selected under Subsection (2)(b)(i).

(4) The arbitrator or arbitration panel shall issue a decision in writing no later than 10 days after the day on which the hearing described in Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(6) The parties may agree to:

(a) binding arbitration;

(b) formal, nonbinding arbitration; or

(c) informal, nonbinding arbitration.

(7) If the parties agree in writing to binding arbitration:

(a) the arbitration shall be binding;

(b) the decision of the arbitration panel shall be final;

(c) neither party may appeal the decision of the arbitration panel; and

(d) notwithstanding Subsection (10), the person or entity challenging the impact fee may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(b) For purposes of applying Title 63G, Chapter 4, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63G-4-502, "agency" means a local political subdivision.

(9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with the district court in which the local political subdivision is located.

(b) An appeal under Subsection (9)(a) shall be filed within 30 days after the day on which the arbitration panel issues a decision under Subsection (4).

(c) The district court shall consider de novo each appeal filed under this Subsection (9).

(d) Notwithstanding Subsection (10), a person or entity that files an appeal under this Subsection (9) may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(b) The filing of a written request for arbitration within the required time in accordance with Subsection (1) tolls all time limitations under Section 11-36a-702 until the day on which the arbitration panel issues a decision.

(11) The person or entity filing a request for arbitration and the local political subdivision shall equally share all costs of an arbitration proceeding under this section.

Section 32. Section 13-43-205 is amended to read:

13-43-205. Advisory opinion.

At any time before a final decision on a land use application by a local appeal authority under Section 10-9a-708 or 17-27a-708, a local government or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral third party to determine compliance with:

(1) Sections 10-9a-507 through 10-9a-511;

(2) Sections 17-27a-506 through 17-27a-510; and

(3) Title 11, Chapter ~~[36]~~ 36a, Impact Fees Act.

Section 33. Section 13-43-206 is amended to read:

13-43-206. Advisory opinion -- Process.

(1) A request for an advisory opinion under Section 13-43-205 shall be:

(a) filed with the Office of the Property Rights Ombudsman; and

(b) accompanied by a filing fee of $150.

(2) The Office of the Property Rights Ombudsman may establish policies providing for partial fee waivers for a person who is financially unable to pay the entire fee.

(3) A person requesting an advisory opinion need not exhaust administrative remedies, including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an advisory opinion.

(4) The Office of the Property Rights Ombudsman shall:

(a) deliver notice of the request to opposing parties indicated in the request;

(b) inquire of all parties if there are other necessary parties to the dispute; and

(c) deliver notice to all necessary parties.

(5) If a governmental entity is an opposing party, the Office of the Property Rights Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

(6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the parties can agree to a neutral third party to issue an advisory opinion.

(b) If no agreement can be reached within four business days after notice is delivered pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall appoint a neutral third party to issue an advisory opinion.

(7) All parties that are the subject of the request for advisory opinion shall:

(a) share equally in the cost of the advisory opinion; and

(b) provide financial assurance for payment that the neutral third party requires.

(8) The neutral third party shall comply with the provisions of Section 78B-11-109, and shall promptly:

(a) seek a response from all necessary parties to the issues raised in the request for advisory opinion;

(b) investigate and consider all responses; and

(c) issue a written advisory opinion within 15 business days after the appointment of the neutral third party under Subsection (6)(b), unless:

(i) the parties agree to extend the deadline; or

(ii) the neutral third party determines that the matter is complex and requires additional time to render an opinion, which may not exceed 30 calendar days.

(9) An advisory opinion shall include a statement of the facts and law supporting the opinion's conclusions.

(10) (a) Copies of any advisory opinion issued by the Office of the Property Rights Ombudsman shall be delivered as soon as practicable to all necessary parties.

(b) A copy of the advisory opinion shall be delivered to the government entity in the manner provided for in Section 63G-7-401.

(11) An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to, nor admissible as evidence in, a dispute involving land use law except as provided in Subsection (12).

(12) (a) Subject to Subsection (12)(d), if the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion:

(i) the substantially prevailing party on that cause of action:

(A) may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and

(B) shall be refunded an impact fee held to be in violation of Title 11, Chapter [~~36~~] 36a, Impact Fees Act, based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee; and

(ii) in accordance with Subsection (12)(b), a government entity shall refund an impact fee held to be in violation of Title 11, Chapter [~~36~~] 36a, Impact Fees Act, to the person who was in record title of the property on the day on which the impact fee for the property was paid if:

(A) the impact fee was paid on or after the day on which the advisory opinion on the impact fee was issued but before the day on which the final court ruling on the impact fee is issued; and

(B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from the government entity within 30 days after the day on which the court issued the final ruling on the impact fee.

(b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee.

(c) Nothing in this Subsection (12) is intended to create any new cause of action under land use law.

(d) Subsection (12)(a) does not apply unless the resolution described in Subsection (12)(a) is final.

(13) Unless filed by the local government, a request for an advisory opinion under Section 13-43-205 does not stay the progress of a land use application, or the effect of a land use decision.

Section 34. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (11)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (11)(a)(i).

(12) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(13) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(14) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(16) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

(17) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(18) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(19) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

(20) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(21) "Impact fee" means a payment of money imposed under Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

(22) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(23) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(24) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(25) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) "Land use application" means an application required by a county's land use ordinance.

(27) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(28) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

(29) "Land use permit" means a permit issued by a land use authority.

(30) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(31) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(32) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(33) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(35) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(36) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(37) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

(38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(39) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

(40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

(41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(43) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(45) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(46) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(47) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

(48) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(49) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(50) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(51) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(52) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(53) "State" includes any department, division, or agency of the state.

(54) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(55) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (55) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(56) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

(57) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(58) "Unincorporated" means the area outside of the incorporated area of a municipality.

(59) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(60) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 35. Section 17-27a-305 is amended to read:

17-27a-305. Other entities required to conform to county's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the county.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from county land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A county of the first class may not, through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a county's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a county may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a county may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter [~~36~~] 36a, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and county building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a county.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the county.

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a county official with authority to issue the certificate, if the school district or charter school used a county building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any county requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections [~~11-36-102(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee listed in Subsection 17-27a-509(5);

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 17-27a-304.

Section 36. Section 17-27a-509 is amended to read:

17-27a-509. Limit on fees -- Requirement to itemize fees.

(1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the county charges for a building permit fee for that building.

(2) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical plans.

(3) A county may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county water, sewer, storm water, power, or other utility system.

(4) A county may not impose or collect:

(a) a land use application fee that exceeds the reasonable cost of processing the application; or

(b) an inspection or review fee that exceeds the reasonable cost of performing the inspection or review.

(5) Upon the request of an applicant or an owner of residential property, the county shall itemize each fee that the county imposes on the applicant or on the residential property, respectively, showing the basis of each calculation for each fee imposed.

(6) A county may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection [~~11-36-102(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection [~~11-36-202(2)(b)~~] 11-36a-402(2).

Section 37. Section 17B-1-111 is amended to read:

17B-1-111. Impact fee resolution -- Notice and hearing requirements.

(1) (a) If a local district wishes to impose impact fees, the board of trustees of the local district shall:

(i) prepare a proposed impact fee resolution that meets the requirements of Title 11, Chapter [~~36~~] 36a, Impact Fees Act;

(ii) make a copy of the impact fee resolution available to the public at least 14 days before the date of the public hearing and hold a public hearing on the proposed impact fee resolution; and

(iii) provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(b) After the public hearing, the board of trustees may:

(i) adopt the impact fee resolution as proposed;

(ii) amend the impact fee resolution and adopt or reject it as amended; or

(iii) reject the resolution.

(2) A local district meets the requirements of reasonable notice required by this section if it:

(a) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(b) gives actual notice of the hearing or meeting.

(3) The local district's board of trustees may enact a resolution establishing stricter notice requirements than those required by this section.

(4) (a) Proof that one of the two forms of notice required by this section was given is prima facie evidence that notice was properly given.

(b) If notice given under authority of this section is not challenged within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section 38. Section 17B-1-118 is amended to read:

17B-1-118. Local district hookup fee -- Preliminary design or site plan from a specified public agency.

(1) As used in this section:

(a) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a local district water, sewer, storm water, power, or other utility system.

(b) "Impact fee" has the same meaning as defined in Section [~~11-36-102~~] 11-36a-102.

(c) "Specified public agency" means:

(i) the state;

(ii) a school district; or

(iii) a charter school.

(d) "State" includes any department, division, or agency of the state.

(2) A local district may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the local district water, sewer, storm water, power, or other utility system.

(3) (a) A specified public agency intending to develop its land shall submit a development plan and schedule to each local district from which the specified public agency anticipates the development will receive service:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the local district to assess:

(A) the demand for public facilities listed in Subsections [~~11-36-102(14)~~] 11-36a-102(15)(a), (b), (c), (d), (e), and (g) caused by the development;

(B) the amount of any hookup fees, or impact fees or substantive equivalent;

(C) any credit against an impact fee; and

(D) the potential for waiving an impact fee.

(b) The local district shall respond to a specified public agency's submission under Subsection (3)(a) with reasonable promptness in order to allow the specified public agency to consider information the local district provides under Subsection (3)(a)(ii) in the process of preparing the budget for the development.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection (3) that complies with the requirements of that subsection, the specified public agency vests in the local district's hookup fees and impact fees in effect on the date of submission.

Section 39. Section 17B-1-643 is amended to read:

17B-1-643. Imposing or increasing a fee for service provided by local district.

(1) (a) Before imposing a new fee or increasing an existing fee for a service provided by a local district, each local district board of trustees shall first hold a public hearing at which any interested person may speak for or against the proposal to impose a fee or to increase an existing fee.

(b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning no earlier than 6 p.m.

(c) A public hearing required under this Subsection (1) may be combined with a public hearing on a tentative budget required under Section 17B-1-610.

(d) Except to the extent that this section imposes more stringent notice requirements, the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act, in holding the public hearing under Subsection (1)(a).

(2) (a) Each local district board shall give notice of a hearing under Subsection (1) as provided in Subsection (2)(b)(i) or (ii).

(b) (i) (A) The notice required under Subsection (2)(a) shall be published:

(I) in a newspaper or combination of newspapers of general circulation in the local district, if there is a newspaper or combination of newspapers of general circulation in the local district; or

(II) if there is no newspaper or combination of newspapers of general circulation in the local district, the local district board shall post at least one notice per 1,000 population within the local district, at places within the local district that are most likely to provide actual notice to residents within the local district.

(B) The notice described in Subsection (2)(b)(i)(A)(I):

(I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border;

(II) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear;

(III) whenever possible, shall appear in a newspaper that is published at least one day per week;

(IV) shall be in a newspaper or combination of newspapers of general interest and readership in the local district, and not of limited subject matter; and

(V) shall be run once each week for the two weeks preceding the hearing.

(ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district board intends to impose or increase a fee for a service provided by the local district and will hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not less than seven days after the day the first notice is published, for the purpose of hearing comments regarding the proposed imposition or increase of a fee and to explain the reasons for the proposed imposition or increase.

(c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of trustees may give the notice required under Subsection (2)(a) by mailing the notice to those within the district who:

(A) will be charged the fee for a district service, if the fee is being imposed for the first time; or

(B) are being charged a fee, if the fee is proposed to be increased.

(ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

(iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing fee.

(d) If the hearing required under this section is combined with the public hearing required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice required under Section 17B-1-609.

(e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie evidence that notice was properly given.

(f) If no challenge is made to the notice given of a hearing required by Subsection (1) within 30 days after the date of the hearing, the notice is considered adequate and proper.

(3) After holding a public hearing under Subsection (1), a local district board may:

(a) impose the new fee or increase the existing fee as proposed;

(b) adjust the amount of the proposed new fee or the increase of the existing fee and then impose the new fee or increase the existing fee as adjusted; or

(c) decline to impose the new fee or increase the existing fee.

(4) This section applies to each new fee imposed and each increase of an existing fee that occurs on or after July 1, 1998.

(5) (a) This section does not apply to an impact fee.

(b) The imposition or increase of an impact fee is governed by Title 11, Chapter [~~36~~] 36a, Impact Fees Act.

Section 40. Section 17B-2a-1004 is amended to read:

17B-2a-1004. Additional water conservancy district powers -- Limitations on water conservancy districts.

(1) In addition to the powers conferred on a water conservancy district under Section 17B-1-103, a water conservancy district may:

(a) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

(b) acquire or lease any real or personal property or acquire any interest in real or personal property, as provided in Subsections 17B-1-103(2)(a) and (b), whether inside or outside the district;

(c) acquire or construct works, facilities, or improvements, as provided in Subsection 17B-1-103(2)(d), whether inside or outside the district;

(d) acquire water, works, water rights, and sources of water necessary or convenient to the full exercise of the district's powers, whether the water, works, water rights, or sources of water are inside or outside the district, and encumber, sell, lease, transfer an interest in, or dispose of water, works, water rights, and sources of water;

(e) fix rates and terms for the sale, lease, or other disposal of water;

(f) acquire rights to the use of water from works constructed or operated by the district or constructed or operated pursuant to a contract to which the district is a party, and sell rights to the use of water from those works;

(g) levy assessments against lands within the district to which water is allotted on the basis of:

(i) a uniform district-wide value per acre foot of irrigation water; or

(ii) a uniform unit-wide value per acre foot of irrigation water, if the board divides the district into units and fixes a different value per acre foot of water in the respective units;

(h) fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, though not necessarily equal or uniform, for like classes of service;

(i) adopt and modify plans and specifications for the works for which the district was organized;

(j) investigate and promote water conservation and development;

(k) appropriate and otherwise acquire water and water rights inside or outside the state;

(l) develop, store, treat, and transport water;

(m) acquire stock in canal companies, water companies, and water users associations;

(n) acquire, construct, operate, or maintain works for the irrigation of land;

(o) subject to Subsection (2), sell water and water services to individual customers and charge sufficient rates for the water and water services supplied;

(p) own property for district purposes within the boundaries of a municipality; and

(q) coordinate water resource planning among public entities.

(2) (a) A water conservancy district and another political subdivision of the state may contract with each other, and a water conservancy district may contract with one or more public entities and private persons, for:

(i) the joint operation or use of works owned by any party to the contract; or

(ii) the sale, purchase, lease, exchange, or loan of water, water rights, works, or related services.

(b) An agreement under Subsection (2)(a) may provide for the joint use of works owned by one of the contracting parties if the agreement provides for reasonable compensation.

(c) A statutory requirement that a district supply water to its own residents on a priority basis does not apply to a contract under Subsection (2)(a).

(d) An agreement under Subsection (2)(a) may include terms that the parties determine, including:

(i) a term of years specified by the contract;

(ii) a requirement that the purchasing party make specified payments, without regard to actual taking or use;

(iii) a requirement that the purchasing party pay user charges, charges for the availability of water or water facilities, or other charges for capital costs, debt service, operating and maintenance costs, and the maintenance of reasonable reserves, whether or not the related water, water rights, or facilities are acquired, completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of water or services for any reason;

(iv) provisions for one or more parties to acquire an undivided ownership interest in, or a contractual right to the capacity, output, or services of, joint water facilities, and establishing:

(A) the methods for financing the costs of acquisition, construction, and operation of the joint facilities;

(B) the method for allocating the costs of acquisition, construction, and operation of the facilities among the parties consistent with their respective interests in or rights to the facilities;

(C) a management committee comprised of representatives of the parties, which may be

responsible for the acquisition, construction, and operation of the facilities as the parties determine; and

(D) the remedies upon a default by any party in the performance of its obligations under the contract, which may include a provision obligating or enabling the other parties to succeed to all or a portion of the ownership interest or contractual rights and obligations of the defaulting party; and

(v) provisions that a purchasing party make payments from:

(A) general or other funds of the purchasing party;

(B) the proceeds of assessments levied under this part;

(C) the proceeds of impact fees imposed by any party under Title 11, Chapter ~~[36]~~ 36a, Impact Fees Act;

(D) revenues from the operation of the water system of a party receiving water or services under the contract;

(E) proceeds of any revenue-sharing arrangement between the parties, including amounts payable as a percentage of revenues or net revenues of the water system of a party receiving water or services under the contract; and

(F) any combination of the sources of payment listed in Subsections (2)(d)(v)(A) through (E).

(3) (a) A water conservancy district may enter into a contract with another state or a political subdivision of another state for the joint construction, operation, or ownership of a water facility.

(b) Water from any source in the state may be appropriated and used for beneficial purposes within another state only as provided in Title 73, Chapter 3a, Water Exports.

(4) (a) Except as provided in Subsection (4)(b), a water conservancy district may not sell water to a customer located within a municipality for domestic or culinary use without the consent of the municipality.

(b) Subsection (4)(a) does not apply if:

(i) the property of a customer to whom a water conservancy district sells water was, at the time the district began selling water to the customer, within an unincorporated area of a county; and

(ii) after the district begins selling water to the customer, the property becomes part of a municipality through municipal incorporation or annexation.

(5) A water conservancy district may not carry or transport water in transmountain diversion if title to the water was acquired by a municipality by eminent domain.

(6) A water conservancy district may not be required to obtain a franchise for the acquisition, ownership, operation, or maintenance of property.

(7) A water conservancy district may not acquire by eminent domain title to or beneficial use of vested water rights for transmountain diversion.

Section 41. Repealer.

This bill repeals:

Section 11-36-101, Title.

Section 11-36-102 (Superseded 05/11/11), Definitions.

Section 11-36-102 (Effective 05/11/11), Definitions.

Section 11-36-201, Impact fees -- Analysis -- Capital facilities plan -- Notice of plan -- Summary -- Exemptions.

Section 11-36-202, Impact fees -- Enactment -- Required and allowed provisions -- Limitations -- Effective date.

Section 11-36-301, Impact fees -- Accounting -- Report.

Section 11-36-302, Impact fees -- Expenditure.

Section 11-36-303, Refunds.

Section 11-36-401, Impact fees -- Challenges -- Appeals.

Section 11-36-401.5, Mediation.

Section 11-36-402, Challenging an impact fee by arbitration -- Procedure -- Appeal -- Costs.

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

Section 42. Effective date.

This bill takes effect on May 11, 2011.

CHAPTER 48
S. B. 159
Passed March 2, 2011
Approved March 16, 2011
Effective May 10, 2011

SEX OFFENDER REGISTRY REVISIONS

Chief Sponsor: Dennis E. Stowell
House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding sex and kidnap offender registration.

Highlighted Provisions:

This bill:

- adds Canada, the United Kingdom, Australia, and New Zealand as countries where convictions for sex or kidnap offenses are recognized for purposes of identifying convictions subject to registration;
- adds conviction of the offense of aggravated human trafficking as a kidnap offense subject to registration;
- adds as offenses subject to registration as a sex offender, for convictions on and after May 10, 2011:
  - sexual exploitation of a vulnerable adult; and
  - custodial sexual relations, when the person in custody is younger than 18 years of age; and
- requires lifetime registration for the offense of aggravated exploitation of prostitution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 106, Sexual Exploitation Amendments, by amending the reference to a code section citation amended in S.B. 106.

Utah Code Sections Affected:

AMENDS:

77-27-21.5, as last amended by Laws of Utah 2010, Chapters 55, 120, 144, 283, and 328

Utah Code Sections Affected by Coordination Clause:

77-27-21.5, as last amended by Laws of Utah 2010, Chapters 55, 120, 144, 283, and 328

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

Section 1. Section 77-27-21.5 is amended to read:

77-27-21.5. Sex and kidnap offenders -- Registration -- Information system -- Law enforcement and courts to report -- Penalty -- Effect of expungement.

(1) As used in this section:

(a) "Business day" means a day on which state offices are open for regular business.

(b) "Department" means the Department of Corrections.

(c) "Division" means the Division of Juvenile Justice Services.

(d) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(e) "Indian Country" means:

(i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(ii) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(iii) all Indian allotments, including the Indian allotments to which the Indian titles to have not been extinguished, including rights-of-way running through the allotments.

(f) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(g) "Kidnap offender" means any person other than a natural parent of the victim who:

(i) has been convicted in this state of a violation of:

(A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;

(B) Section 76-5-301.1, child kidnapping;

(C) Section 76-5-302, aggravated kidnapping; [~~or~~]

(D) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

[~~(D)~~] (E) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (1)(g)(i)(A) through [~~(C)~~] (D);

(ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (1)(g)(i) and who is:

(A) a Utah resident; or

(B) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(iii) (A) is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

(B) in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(iv) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;

(v) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (1)(g); or

(vi) is adjudicated delinquent based on one or more offenses listed in Subsection (1)(g)(i) and who has been committed to the division for secure confinement and remains in the division's custody 30 days prior to the person's 21st birthday.

(h) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex offender as defined in Subsection (1)(n).

(j) "Online identifier" or "Internet identifier":

(i) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(ii) does not include date of birth, Social Security number, PIN number, or Internet passwords.

(k) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(l) "Register" means to comply with the requirements of this section and administrative rules of the department made under this section.

(m) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12 month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(n) "Sex offender" means any person:

(i) convicted in this state of:

(A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

[~~(B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;~~]

(B) Section 76-5-111, sexual exploitation of a vulnerable adult, on or after May 10, 2011;

(C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(D) Section 76-5-401.1, sexual abuse of a minor;

(E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(F) Section 76-5-402, rape;

(G) Section 76-5-402.1, rape of a child;

(H) Section 76-5-402.2, object rape;

(I) Section 76-5-402.3, object rape of a child;

(J) a felony violation of Section 76-5-403, forcible sodomy;

(K) Section 76-5-403.1, sodomy on a child;

(L) Section 76-5-404, forcible sexual abuse;

(M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(N) Section 76-5-405, aggravated sexual assault;

(O) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;

[~~(O)~~] (P) Section 76-5a-3, sexual exploitation of a minor;

[~~(P)~~] (Q) Section 76-7-102, incest;

[~~(Q)~~] (R) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense four or more times;

[~~(R)~~] (S) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the offense four or more times;

[~~(S)~~] (T) any combination of convictions of Subsection 76-9-702(1), lewdness, and of Subsection 76-9-702(3), sexual battery, that total four or more convictions;

[~~(T)~~] (U) Section 76-9-702.5, lewdness involving a child;

(V) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

[~~(U)~~] (W) Section 76-10-1306, aggravated exploitation of prostitution; or

[~~(V)~~] (X) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (1)(n)(i);

(ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:

(A) a Utah resident; or

(B) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(iii) (A) who is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

(B) who, in any 12 month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(iv) who is a nonresident regularly employed or working in this state or who is a student in this state

and was convicted of one or more offenses listed in Subsection (1)(n)(i), or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required to register in the person's jurisdiction of residence;

(v) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or

(vi) who is adjudicated delinquent based on one or more offenses listed in Subsection (1)(n)(i) and who has been committed to the division for secure confinement and remains in the division's custody 30 days prior to the person's 21st birthday.

(o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

(2) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;

(b) make information listed in Subsection (27) available to the public; and

(c) share information provided by an offender under this section that may not be made available to the public under Subsection (27), but only:

(i) for the purposes under this Subsection (2); or

(ii) in accordance with Section 63G-2-206.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or (n), within five business days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n), the convicting court shall within three business days forward a copy of the judgment and sentence to the department.

(5) An offender in the custody of the department shall be registered by agents of the department upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) An offender who is not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(7) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.

(8) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(9) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole within the department.

(ii) In order to conduct offender registration under this section, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified by the department as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (9)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this section the name of the agency, whether it is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.

(10) An offender convicted by any other jurisdiction is required to register under Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(11) (a) An offender required to register under Subsection (1)(g) or (n) who is under supervision by the department shall register with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection (1)(g) or (n) who is no longer under

supervision by the department shall register with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (14).

(b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (12)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (12)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (12)(a), or is less frequent than every six months.

(c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (14).

(B) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(ii) Offenses referred to in Subsection (12)(c)(i) are:

(A) any offense listed in Subsection (1)(g) or (n) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection (1)(g) or (n) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(B) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(II) Section 76-5-402, rape;

(III) Section 76-5-402.1, rape of a child;

(IV) Section 76-5-402.2, object rape;

(V) Section 76-5-402.3, object rape of a child;

(VI) Section 76-5-403.1, sodomy on a child;

(VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

(VIII) Section 76-5-405, aggravated sexual assault;

(C) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

(E) Section 76-5-403, forcible sodomy;

(F) Section 76-5-404.1, sexual abuse of a child; [~~or~~]

(G) Section 76-5a-3, sexual exploitation of a minor[~~.~~]; or

(H) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

(d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(e) An offender who is required to register under this Subsection (12) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

(f) A sex offender who violates Section 77-27-21.8 while required to register under this section shall register for an additional five years subsequent to the registration period otherwise required under this section.

(13) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with:

(a) the continuing registration requirements of this section during the period of registration required in Subsection (12), including:

(i) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(ii) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(iii) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state; and

(b) the driver license certificate or identification card surrender requirement under Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or 53-3-804.

(14) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name and the address of any place where the offender is employed or will be employed;

(p) the name and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's Social Security number.

(15) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) any other relevant identifying information as determined by the department;

(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education; and

(ii) entered into the appropriate state records or data system.

(16) (a) An offender who knowingly fails to register under this section or provides false or incomplete information is guilty of:

(i) a third degree felony and shall be sentenced to serve a term of incarceration for not less than 90 days and also at least one year of probation if:

(A) the offender is required to register for a felony conviction or adjudicated delinquent for what would be a felony if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i); or

(B) the offender is required to register for the offender's lifetime under Subsection (12)(c); or

(ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation if the offender is required to register for a misdemeanor conviction or is adjudicated delinquent for what would be a misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving the term required under Subsection (16)(a). This Subsection (16)(b) supersedes any other provision of the law contrary to this section.

(c) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this section.

(17) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection (15) that is collected

and released under Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

(18) (a) If an offender is to be temporarily sent outside a secure facility in which the offender is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (18) does not apply to any person temporarily released under guard from the institution in which the person is confined.

(19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to register as required under this section.

(20) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection (12)(c).

(21) The department may make administrative rules necessary to implement this section, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(22) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (14) and (15).

(23) This section does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

(24) The department shall maintain a Sex Offender and Kidnap Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:

(a) the information contained on the site is obtained from offenders and the department does not guarantee its accuracy or completeness;

(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and

(c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.

(25) The Sex Offender and Kidnap Offender Notification and Registration website shall be indexed by both the surname of the offender and by postal codes.

(26) The department shall construct the Sex Offender Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(27) The Sex Offender and Kidnap Offender Notification and Registration website shall include the following registry information:

(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;

(b) the addresses of the offender's primary, secondary, and temporary residences;

(c) a physical description, including the offender's date of birth, height, weight, and eye and hair color;

(d) the make, model, color, year, and plate number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;

(g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;

(h) a list of places where the offender works as a volunteer; and

(i) the crimes listed in Subsections (1)(g) and(n) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(28) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

(29) The department shall redact information that, if disclosed, could reasonably identify a victim.

(30) (a) Each offender required to register under Subsection (12) shall, in the month of the offender's birth:

(i) pay to the department an annual fee of $100 each year the offender is subject to the registration requirements of this section; and

(ii) pay to the registering agency, if it is an agency other than the Department of Corrections, an annual fee of not more than $25, which may be assessed by that agency for providing registration.

(b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(c) The department shall deposit fees under this Subsection (30) in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this section and monitoring offender registration compliance, including the costs of:

(i) data entry;

(ii) processing registration packets;

(iii) updating registry information;

(iv) ensuring offender compliance with registration requirements under this section; and

(v) apprehending offenders who are in violation of the offender registration requirements under this section.

(31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

Section 2. Coordinating S.B. 159 with S.B. 106 -- Technical amendments.

If this S.B. 159 and S.B. 106, Sexual Exploitation Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by amending Subsection 77-27-21.5(1)(n)(i)(B) to read:

"(B) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011."

CHAPTER 49
S. B. 221
Passed March 9, 2011
Approved March 16, 2011
Effective March 16, 2011

STATE OF UTAH RESOURCE MANAGEMENT PLAN FOR FEDERAL LANDS

Chief Sponsor: Ralph Okerlund
House Sponsor: Michael E. Noel
Cosponsors: David P. Hinkins
Dennis E. Stowell
Kevin T. Van Tassell

LONG TITLE

General Description:

This bill establishes a state land use planning and management program.

Highlighted Provisions:

This bill:

- provides definitions, including the lands subject to the state land use planning and management program; and
- adopts a multiple use policy for the specified lands, including:
  - opposing the federal designation, management, or treatment of specified lands in a manner that resembles wilderness or wilderness study areas, including the use of the non-impairment standard applicable to wilderness study areas;
  - achieving and maintaining at the highest reasonably sustainable levels a continuing yield of energy, hard rock, and natural resources in specified lands;
  - achieving and maintaining livestock grazing in the specified lands at the highest reasonably sustainable levels;
  - managing the watershed in the specified lands to achieve and maintain water resources at the highest reasonably sustainable levels;
  - achieving and maintaining traditional access to outdoor recreational opportunities in the specified lands;
  - managing the specified lands so as to protect prehistoric rock art, artifacts, and other culturally important items found on the specified lands;
  - managing the specified lands so as not to interfere with the property rights of adjacent property owners;
  - managing the specified lands so as not to interfere with school trust lands; and
  - discouraging a federal classification of specified lands as areas of critical environmental concern or areas with visual resource management class I or II rating.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

ENACTS:
63J-8-101, Utah Code Annotated 1953
63J-8-102, Utah Code Annotated 1953
63J-8-103, Utah Code Annotated 1953
63J-8-104, Utah Code Annotated 1953
63J-8-105, Utah Code Annotated 1953
63J-8-106, Utah Code Annotated 1953

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

Section 1. Section 63J-8-101 is enacted to read:

CHAPTER 8. STATE OF UTAH RESOURCE MANAGEMENT PLAN FOR FEDERAL LANDS

63J-8-101. Title.

This chapter is known as "State of Utah Resource Management Plan for Federal Lands."

Section 2. Section 63J-8-102 is enacted to read:

63J-8-102. Definitions.

As used in this chapter:

(1) "ACEC" means an area of critical environmental concern.

(2) "AUM" means animal unit months, a unit of grazing forage.

(3) "BLM" means the United States Bureau of Land Management.

(4) "FLPMA" means the Federal Land Policy Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.

(5) "Forest service" means the United States Forest Service within the United States Department of Agriculture.

(6) "Multiple use" means proper stewardship of the subject lands pursuant to Section 1031(C) of FLPMA, 43 U.S.C. Sec. 170(C).

(7) "OHV" means off-highway vehicle as defined in Section 41-22-2.

(8) "Settlement Agreement" means the written agreement between the state and the Department of the Interior in 2003 (revised in 2005) that resolved the case of State of Utah v. Gale Norton, Secretary of Interior (United States District Court, D. Utah, Case No. 2:96cv0870).

(9) "SITLA" means the School and Institutional Trust Lands Administration as created in Section 53C-1-201.

(10) (a) "Subject lands" means the following non-WSA BLM lands:

(i) in Beaver County:

(A) Mountain Home Range South, Jackson Wash, The Toad, North Wah Wah Mountains, Central Wah Wah Mountains, and San Francisco Mountains according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at

http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(B) White Rock Range, South Wah Wah Mountains, and Granite Peak according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ii) in Box Elder County: Little Goose Creek, Grouse Creek Mountains North, Grouse Creek Mountains South, Bald Eagle Mountain, Central Pilot Range, Pilot Peak, Crater Island West, Crater Island East, Newfoundland Mountains, and Grassy Mountains North according to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(iii) in Carbon County: Desbrough Canyon and Turtle Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(iv) in Daggett County: Goslin Mountain, Home Mountain, Red Creek Badlands, O-wi-yu-kuts, Lower Flaming Gorge, Crouse Canyon, and Diamond Breaks according to the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(v) in Duchesne County: Desbrough Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(vi) in Emery County:

(A) San Rafael River and Sweetwater Reef, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Flat Tops according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(C) Price River, Lost Spring Wash, Eagle Canyon, Upper Muddy Creek, Molen Reef, Rock Canyon, Mussentuchit Badland, and Muddy Creek, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(vii) in Garfield County:

(A) Pole Canyon, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Dirty Devil, Fiddler Butte, Little Rockies, Cane Spring Desert, and Cane Spring Desert Adjacents, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Lampstand, Wide Hollow, Steep Creek, Brinkerhof Flats, Little Valley Canyon, Death Hollow, Studhorse Peaks, Box Canyon, Heaps Canyon, North Escalante Canyon, Colt Mesa, East of Bryce, Slopes of Canaan Peak, Horse Spring Canyon, Muley Twist Flank, Pioneer Mesa, Slopes of Bryce, Blue Hills, Mud Springs Canyon, Carcass Canyon, Willis Creek North, Kodachrome Basin, and Kodachrome Headlands, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Notom Bench, Mount Ellen, Bull Mountain, Dogwater Creek, Ragged Mountain, Mount Pennell, Mount Hillers, Bullfrog Creek, and Long Canyon, according to the region map entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(viii) in Iron County: Needle Mountains, Steamboat Mountain, Broken Ridge, Paradise Mountains, Crook Canyon, Hamlin, North Peaks, Mount Escalante, and Antelope Ridge, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ix) in Juab County: Deep Creek Mountains, Essex Canyon, Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Fish Springs Ridge, Thomas Range, Drum Mountains, Dugway Mountains, Keg Mountains West, Keg Mountains East, Lion Peak, and Rockwell Little Sahara, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(x) in Kane County:

(A) Willis Creek North, Willis Creek, Kodachrome Badlands, Mud Springs Canyon,

Carcass Canyon, Scorpion, Bryce Boot, Paria–Hackberry Canyons, Fiftymile Canyon, Hurricane Wash, Upper Kanab Creek, Timber Mountain, Nephi Point, Paradise Canyon, Wahweap Burning Hills, Fiftymile Bench, Forty Mile Gulch, Sooner Bench 1, 2, & 3, Rock Cove, Warm Bench, Andalex Not, Vermillion Cliffs, Ladder Canyon, The Cockscomb, Nipple Bench, Moquith Mountain, Bunting Point, Glass Eye Canyon, and Pine Hollow, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(B) Orderville Canyon, Jolley Gulch, and Parunuweap Canyon, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xi) in Millard County: Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Swasey Mountain, Little Drum Mountains North, Little Drum Mountains South, Drum Mountains, Snake Valley, Coyote Knoll, Howell Peak, Tule Valley South, Ledger Canyon, Chalk Knolls, Orr Ridge, Notch View, Bullgrass Knoll, Notch Peak, Barn Hills, Cricket Mountains, Burbank Pass, Middle Burbank Hills, King Top, Barn Hills, Red Tops, Middle Burbank Hills, Juniper, Painted Rock Mountain, Black Hills, Tunnel Springs, Red Canyon, Sand Ridge, Little Sage Valley, Cat Canyon, Headlight Mountain, Black Hills, Mountain Range Home North, Tweedy Wash, North Wah Wah Mountains, Jackson Wash, and San Francisco Mountains, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xii) in Piute County: Kingston Ridge, Rocky Ford, and Phonolite Hill, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xiii) in San Juan County:

(A) Horseshoe Point, Deadhorse Cliffs, Gooseneck, Demon's Playground, Hatch Canyon, Lockhart Basin, Indian Creek, Hart's Point, Butler Wash, Bridger Jack Mesa, and Shay Mountain, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Dark Canyon, Copper Point, Fortknocker Canyon, White Canyon, The Needle, Red Rock Plateau, Upper Red Canyon, and Tuwa Canyon, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Hunters Canyon, Behind the Rocks, Mill Creek, and Coyote Wash, according to the region map entitled "Moab/La Sal" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Hammond Canyon, Allen Canyon, Mancos Jim Butte, Arch Canyon, Monument Canyon, Tin Cup Mesa, Cross Canyon, Nokai Dome, Grand Gulch, Fish and Owl Creek Canyons, Comb Ridge, Road Canyon, The Tabernacle, Lime Creek, San Juan River, and Valley of the Gods, according to the region map entitled "San Juan" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xiv) in Sevier County: Rock Canyon, Mussentuchit Badland, Limestone Cliffs, and Jones' Bench, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xv) in Tooele County:

(A) Silver Island Mountains, Crater Island East, Grassy Mountains North, Grassy Mountains South, Stansbury Island, Cedar Mountains North, Cedar Mountains Central, Cedar Mountains South, North Stansbury Mountains, Oquirrh Mountains, and Big Hollow, according to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011, excluding the areas that Congress designated as wilderness under the National Defense Authorization Act for Fiscal Year 2006; and

(B) Ochre Mountain, Deep Creek Mountains, Dugway Mountains, Indian Peaks, and Lion Peak, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xvi) in Uintah County:

(A) White River, Lower Bitter Creek, Sunday School Canyon, Dragon Canyon, Wolf Point, Winter Ridge, Seep Canyon, Bitter Creek, Hideout Canyon, Sweetwater Canyon, and Hell's Hole, according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.ht

ml as the webpage existed on February 17, 2011; and

(B) Lower Flaming Gorge, Crouse Canyon Stone Bridge Draw, Diamond Mountain, Wild Mountain, Split Mountain Benches, Vivas Cake Hill, Split Mountain Benches South, Beach Draw, Stuntz Draw, Moonshine Draw, Bourdette Draw, and Bull Canyon, according to the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xvii) in Washington County: Couger Canyon, Docs Pass, Slaughter Creek, Butcher Knife Canyon, Square Top, Scarecrow Creek, Beaver Dam Wash, Beaver Dam Mountains North, Beaver Dam Mountains South, Joshua Tree, Beaver Dam Wilderness Expansion, Red Mountain, Cottonwood Canyon, Taylor Canyon, LaVerkin Creek, Beartrap Canyon, Deep Creek, Black Ridge, Red Butte, Kolob Creek, Goose Creek, Dry Creek, Zion National Park Adjacents, Crater Hill, The Watchman, and Canaan Mountain, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011, excluding the areas that Congress designated as wilderness and conservation areas under the Omnibus Public Lands Management Act of 2009; and

(xviii) in Wayne County:

(A) Sweetwater Reef, Upper Horseshoe Canyon, and Labyrinth Canyon, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Flat Tops and Dirty Devil, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Fremont Gorge, Pleasant Creek Bench, Notom Bench, Mount Ellen, and Bull Mountain, according to the region map entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Capital Reef Adjacents, Muddy Creek, Wild Horse Mesa, North Blue Flats, Red Desert, and Factory Butte, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011.

(b) "Subject lands" also includes all BLM and Forest Service lands in the state that are not Wilderness Area or Wilderness Study Areas;

(c) "Subject lands" does not include the following lands that are the subject of consideration for a possible federal lands bill and should be managed according to the 2008 Price BLM Field Office Resource Management Plan until a federal lands bill provides otherwise:

(i) Turtle Canyon and Desolation Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ii) Labyrinth Canyon, Duma Point, and Horseshoe Point, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(iii) Devil's Canyon, Sid's Mountain, Mexican Mountain, San Rafael Reef, Hondu Country, Cedar Mountain, and Wild Horse, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(11) "Wilderness area" means those BLM and Forest Service lands added to the National Wilderness Preservation System by an act of Congress.

(12) "WSA" and "Wilderness Study Area" mean the BLM lands in Utah that were identified as having the necessary wilderness character and were classified as wilderness study areas during the BLM wilderness review conducted between 1976 and 1993 by authority of Section 603 of FLPMA and labeled as Wilderness Study Areas within the final report of the President of the United States to the United States Congress in 1993.

Section 3. Section 63J-8-103 is enacted to read:

63J-8-103. State participation in managing public lands.

In view of the requirement in FLPMA, 43 U.S.C. Sec. 1712, that BLM must work through a planning process that is coordinated with other federal, state, and local planning efforts before making decisions about the present and future uses of public lands, the requirement in FLPMA, 43 U.S.C. Sec. 1714 that BLM may not withdraw or otherwise designate BLM lands for specific purposes without congressional approval, and the requirement in the Forest Service Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. Sec. 528, that lands within the national forests be managed according to the principles of multiple use, and in view of the right which FLPMA, the National Environmental Policy Act, 42 U.S.C. Sec. 4321 et seq. and the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, give

to state and local governments to participate in all BLM and Forest Service efforts to plan for the responsible use of BLM and Forest Service lands and the requirement that BLM and the Forest Service coordinate planning efforts with those of state and local government, the state adopts the following policy for the management of the subject lands:

(1) Pursuant to the proper allocation of governmental authority between the several states and the federal government, the implementation of congressional acts concerning the subject lands must recognize the concurrent jurisdiction of the states and accord full recognition to state interpretation of congressional acts, as reflected in state law, plans, programs, and policies, insofar as the interpretation does not violate the Supremacy Clause, U.S. Constitution, Article VI, Clause 2.

(2) Differences of opinion between the state's plans and policies on use of the subject lands and any proposed decision concerning the subject lands pursuant to federal planning or other federal decision making processes should be mutually resolved between the authorized federal official, including federal officials from other federal agencies advising the authorized federal official in any capacity, and the governor of Utah.

(3) The subject lands managed by the BLM are to be managed to the basic standard of the prevention of undue and unnecessary degradation of the lands, as required by FLPMA. A more restrictive management standard should not apply except through duly adopted statutory or regulatory processes wherein each specific area is evaluated pursuant to the provisions of the BLM's planning process and those of the National Environmental Policy Act.

(4) The subject lands should not be segregated into separate geographical areas for management that resembles the management of wilderness, wilderness study areas, wildlands, lands with wilderness characteristics, or the like.

(5) The BLM and the Forest Service should make plans for the use of the subject lands and resources subject to their management pursuant to statutorily authorized processes, with due regard for the provisions of the National Environmental Policy Act, by:

(a) recognizing that the duly adopted Resource Management Plan or Forest Service equivalent is the fundamental planning document, which may be revised or amended from time to time;

(b) avoiding and eliminating any form of guidance or policy that has the effect of prescreening, segregating, or imposing any form of management requirements upon any of the subject lands and resources prior to any of the planning processes subject to Subsection (5)(a); and

(c) avoiding and eliminating all forms of planning that parallel or duplicate the planning processes subject to Subsection (5)(a).

Section 4. Section 63J-8-104 is enacted to read:

63J-8-104. State land use planning and management program.

The BLM and Forest Service land use plans should produce planning documents consistent with state and local land use plans to the maximum extent consistent with federal law and FLPMA's purposes, by incorporating the state's land use planning and management program for the subject lands that is as follows:

(1) preserve traditional multiple use and sustained yield management on the subject lands to:

(a) achieve and maintain in perpetuity a high-level annual or regular periodic output of agricultural, mineral, and various other resources from the subject lands;

(b) support valid existing transportation, mineral, and grazing privileges in the subject lands at the highest reasonably sustainable levels;

(c) produce and maintain the desired vegetation for watersheds, timber, food, fiber, livestock forage, wildlife forage, and minerals that are necessary to meet present needs and future economic growth and community expansion in each county where the subject lands are situated without permanent impairment of the productivity of the land;

(d) meet the recreational needs and the personal and business-related transportation needs of the citizens of each county where the subject lands are situated by providing access throughout each such county;

(e) meet the needs of wildlife, provided that the respective forage needs of wildlife and livestock are balanced according to the provisions of Subsection 63J-4-401(6)(m);

(f) protect against adverse effects to historic properties, as defined by 36 C.F.R. Sec. 800;

(g) meet the needs of community economic growth and development;

(h) provide for the protection of existing water rights and the reasonable development of additional water rights; and

(i) provide for reasonable and responsible development of electrical transmission and energy pipeline infrastructure on the subject lands;

(2) (a) do not designate, establish, manage, or treat any of the subject lands as an area with management prescriptions that parallel, duplicate, or resemble the management prescriptions established for wilderness areas or wilderness study areas, including the nonimpairment standard applicable to WSAs or anything that parallels, duplicates, or resembles that nonimpairment standard; and

(b) recognize, follow, and apply the agreement between the state and the Department of the Interior in the settlement agreement;

(3) call upon the BLM to revoke and revise BLM Manuals H 6301, H 6302, and H 6303, issued on or about February 25, 2011, in light of the settlement agreement and the following principles of this state plan:

(a) BLM lacks congressional authority to manage subject lands, other than WSAs, as if they are or may become wilderness;

(b) BLM lacks authority to designate geographic areas as lands with wilderness characteristics or designate management prescriptions for such areas other than to use specific geographic-based tools and prescriptions expressly identified in FLPMA;

(c) BLM lacks authority to manage the subject lands in any manner other than to prevent unnecessary or undue degradation, unless the BLM uses geographic tools expressly identified in FLPMA and does so pursuant to a duly adopted provision of a resource management plan adopted under FLPMA, 43 U.S.C. Sec. 1712;

(d) BLM inventories for the presence of wilderness characteristics must be closely coordinated with inventories for those characteristics conducted by state and local governments, and should reflect a consensus among those governmental agencies about the existence of wilderness characteristics, as follows:

(i) any inventory of wilderness characteristics should reflect all of the criteria identified in the Wilderness Act of 1964, including:

(A) a size of 5,000 acres or more, containing no visible roads; and

(B) the presence of naturalness, the opportunity for primitive and unconfined recreation, and the opportunity for solitude;

(ii) geographic areas found to contain the presence of naturalness must appear pristine to the average viewer, and not contain any of the implements, artifacts, or effects of human presence, including:

(A) visible roads, whether maintained or not; and

(B) human-made features such as vehicle bridges, fire breaks, fisheries, enhancement facilities, fire rings, historic mining and other properties, including tailings piles, commercial radio and communication repeater sites, fencing, spring developments, linear disturbances, stock ponds, visible drill pads, pipeline and transmission line rights-of-way, and other similar features;

(iii) factors, such as the following, though not necessarily conclusive, should weigh against a determination that a land area has the presence of naturalness:

(A) the area is or once was the subject of mining and drilling activities;

(B) mineral and hard rock mining leases exist in the area; and

(C) the area is in a grazing district with active grazing allotments and visible range improvements;

(iv) geographic areas found to contain the presence of solitude should convey the sense of solitude within the entire geographic area identified, otherwise boundary adjustments should be performed in accordance with Subsection (3)(d)(vii);

(v) geographic areas found to contain the presence of an opportunity for primitive and unconfined recreation must find these features within the entire area and provide analysis about the effect of the number of visitors to the geographic area upon the presence of primitive or unconfined recreation, otherwise boundary adjustments should be performed in accordance with Subsection (3)(d)(vii);

(vi) in addition to the actions required by the review for roads pursuant to the definitions of roads contained in BLM Manual H 6301, or any similar authority, the BLM should, pursuant to its authority to inventory, identify and list all roads or routes identified as part of a local or state governmental transportation system, and consider those routes or roads as qualifying as roads within the definition of the Wilderness Act of 1964; and

(vii) BLM should adjust the boundaries for a geographic area to exclude areas that do not meet the criteria of lacking roads, lacking solitude, and lacking primitive and unconfined recreation and the boundaries should be redrawn to reflect an area that clearly meets the criteria above, and which does not employ minor adjustments to simply exclude small areas with human intrusions, specifically:

(A) the boundaries of a proposed geographic area containing lands with wilderness characteristics should not be drawn around roads, rights-of-way, and intrusions;

(B) lands located between individual human impacts that do not meet the requirements for lands with wilderness characteristics should be excluded;

(e) BLM should consider the responses of the United States Department of the Interior under cover of the letter dated May 20, 2009, clearly stating that BLM does not have the authority to apply the nonimpairment management standard to the subject lands, or to manage the subject lands in any manner to preserve their suitability for designation as wilderness, when considering the proper management principles for areas that meet the full definition of lands with wilderness characteristics; and

(f) even if the BLM were to properly inventory an area for the presence of wilderness characteristics, the BLM still lacks authority to make or alter project level decisions to automatically avoid impairment of any wilderness characteristics without express congressional authority to do so;

(4) achieve and maintain at the highest reasonably sustainable levels a continuing yield of

energy, hard rock, and nuclear resources in those subject lands with economically recoverable amounts of such resources as follows:

(a) the development of the solid, fluid, and gaseous mineral resources in portions of the subject lands is an important part of the state's economy and the economies of the respective counties, and should be recognized that it is technically feasible to access mineral and energy resources in portions of the subject lands while preserving or, as necessary, restoring nonmineral and nonenergy resources;

(b) all available, recoverable solid, fluid, gaseous, and nuclear mineral resources in the subject lands should be seriously considered for contribution or potential contribution to the state's economy and the economies of the respective counties;

(c) those portions of the subject lands shown to have reasonable mineral, energy, and nuclear potential should be open to leasing, drilling, and other access with reasonable stipulations and conditions, including mitigation, reclamation, and bonding measures where necessary, that will protect the lands against unnecessary and undue damage to other significant resource values;

(d) federal oil and gas existing lease conditions and restrictions should not be modified, waived, or removed unless the lease conditions or restrictions are no longer necessary or effective;

(e) any prior existing lease restrictions in the subject lands that are no longer necessary or effective should be modified, waived, or removed;

(f) restrictions against surface occupancy should be eliminated, modified, or waived, where reasonable;

(g) in the case of surface occupancy restrictions that cannot be reasonably eliminated, modified, or waived, directional drilling should be considered where the mineral and energy resources beneath the area can be reached employing available directional drilling technology;

(h) applications for permission to drill in the subject lands that meet standard qualifications, including reasonable and effective mitigation and reclamation requirements, should be expeditiously processed and granted; and

(i) any moratorium that may exist against the issuance of qualified mining patents and oil and gas leases in the subject lands, and any barriers that may exist against developing unpatented mining claims and filing for new claims, should be carefully evaluated for removal;

(5) achieve and maintain livestock grazing in the subject lands at the highest reasonably sustainable levels by adhering to the policies, goals, and management practices set forth in Subsection 63J-4-401(6)(m);

(6) manage the watershed in the subject lands to achieve and maintain water resources at the highest reasonably sustainable levels as follows:

(a) adhere to the policies, goals, and management practices set forth in Subsection 63J-4-401(6)(m);

(b) deter unauthorized cross-country OHV use in the subject lands by establishing a reasonable system of roads and trails in the subject lands for the use of an OHV, as closing the subject lands to all OHV use will only spur increased and unauthorized use; and

(c) keep open any road or trail in the subject lands that historically has been open to OHV use, as identified on respective county road maps;

(7) achieve and maintain traditional access to outdoor recreational opportunities available in the subject lands as follows:

(a) hunting, trapping, fishing, hiking, family and group parties, family and group campouts and campfires, rock hounding, OHV travel, geological exploring, pioneering, recreational vehicle parking, or just touring in personal vehicles are activities that are important to the traditions, customs, and character of the state and individual counties where the subject lands are located and should continue;

(b) wildlife hunting, trapping, and fishing should continue at levels determined by the Wildlife Board and the Division of Wildlife Resources and traditional levels of group camping, group day use, and other traditional forms of outdoor recreation, both motorized and nonmotorized, should continue; and

(c) the broad spectrum of outdoor recreational activities available on the subject lands should be available to citizens for whom a primitive, nonmotorized, outdoor experience is not preferred, affordable, or physically achievable;

(8) (a) keep open to motorized travel, any road in the subject lands that is part of the respective counties' duly adopted transportation plan;

(b) provide that R.S. 2477 rights-of-way should be recognized by the BLM;

(c) provide that a county road may be temporarily closed or permanently abandoned only by statutorily authorized action of the county or state;

(d) provide that the BLM and the Forest Service must recognize and not unduly interfere with a county's ability to maintain and repair roads and, where reasonably necessary, make improvements to the roads; and

(e) recognize that additional roads and trails may be needed in the subject lands from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the subject lands, including livestock operations and improvements, solid, fluid, and gaseous mineral operations, recreational opportunities and operations, search and rescue needs, other public safety needs, access to public lands for people with disabilities and the elderly, and access to Utah school and institutional trust lands for the accomplishment of the purposes of those lands;

(9) manage the subject lands so as to protect prehistoric rock art, three dimensional structures,

and other artifacts and sites recognized as culturally important and significant by the state historic preservation officer or each respective county by imposing reasonable and effective stipulations and conditions reached by agreement between the federal agency and the state authorized officer pursuant to the authority granted by the National Historic Preservation Act, 16 U.S.C. Sec. 470 et seq.;

(10) manage the subject lands so as to not interfere with the property rights of private landowners as follows:

(a) the state recognizes that there are parcels of private fee land throughout the subject lands;

(b) land management policies and standards in the subject lands should not interfere with the property rights of any private landowner to enjoy and engage in uses and activities on an individual's private property consistent with controlling county zoning and land use laws; and

(c) a private landowner or a guest or client of a private landowner should not be denied the right of motorized access to the private landowner's property consistent with past uses of the private property;

(11) manage the subject lands in a manner that supports the fiduciary agreement made between the state and the federal government concerning the school and institutional trust lands, as managed according to state law, by:

(a) formally recognizing, by duly authorized federal proclamation, the duty of the federal government to support the purposes of the school and institutional trust lands owned by the state and administered by SITLA in trust for the benefit of public schools and other institutions as mandated in the Utah Constitution and the Utah Enabling Act of 1894, 28 Stat. 107;

(b) actively seeking to support SITLA's fiduciary responsibility to manage the school trust lands to optimize revenue by making the school trust lands available for sale and private development and for other multiple and consumptive use activities such as mineral development, grazing, recreation, timber, and agriculture;

(c) not interfering with SITLA's ability to carry out its fiduciary responsibilities by the creation of geographical areas burdened with management restrictions that prohibit or discourage the optimization of revenue, without just compensation;

(d) recognizing SITLA's right of economic access to the school trust lands to enable SITLA to put those sections to use in its fiduciary responsibilities; and

(e) recognizing any management plan enacted by SITLA pursuant to Section 53C-2-201;

(12) oppose the designation of BLM lands as areas of critical environmental concern (ACEC), as the BLM lands are generally not compatible with the state's plan and policy for managing the subject lands, but special cases may exist where such a designation is appropriate if compliance with FLPMA, 43 U.S.C. Sec. 1702(a) is clearly demonstrated and where the proposed designation and protection:

(a) is limited to the geographic size to the minimum necessary to meet the standards required by Section 63J-4-401;

(b) is necessary to protect not just a temporary change in ground conditions or visual resources that can be reclaimed or reversed naturally, but is clearly shown as necessary to protect against visible damage on the ground that will persist on a time scale beyond that which would effectively disqualify the land for a later inventory of wilderness characteristics;

(c) will not be applied in a geographic area already protected by other protective designations available pursuant to law; and

(d) is not a substitute for the nonimpairment management requirements of wilderness study areas; and

(13) recognize that a BLM visual resource management class I or II rating is generally not compatible with the state's plan and policy for managing the subject lands, but special cases may exist where such a rating is appropriate if jointly considered and created by state, local, and federal authorities as part of an economic development plan for a region of the state, with due regard for school trust lands and private lands within the area.

(14) All BLM and Forest Service decision documents should be accompanied with an analysis of the social and economic impact of the decision. Such analysis should:

(a) consider all facets of the decision in light of valuation techniques for the potential costs and benefits of the decision;

(b) clarify whether the costs and benefits employ monetized or nonmonetized techniques;

(c) compare the accuracy, completeness, and viability of monetized and nonmonetized valuation techniques used as part of the analysis, including all caveats on use of the techniques; and

(d) compare the valuation techniques employed in the analysis to the federal standards for valuation employed by the U.S. Department of Justice in court actions.

Section 5. Section 63J-8-105 is enacted to read:

63J-8-105. Maps available for public review.

A printed copy of the maps referenced in Subsection 63J-8-102(10) shall be available for inspection by the public at the offices of the Utah Association of Counties.

Section 6. Section 63J-8-106 is enacted to read:

63J-8-106. Miscellaneous provisions.

(1) Notwithstanding the provisions in the previous sections of this chapter, the state believes that some WSAs and other BLM or Forest Service lands may be considered for permanent inclusion in the National Wilderness Preservation System as part of county specific proposals for Congress to consider if driven by a local process that includes all interested stakeholders.

(2) Nothing in the chapter shall be interpreted to alter, affect, or diminish the authority of the governor.

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 50
H. B. 12
Passed February 4, 2011
Approved March 18, 2011
Effective May 10, 2011

PERSONAL INJURY CLAIMS BY PERSONAL REPRESENTATIVE

Chief Sponsor: Todd E. Kiser
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill clarifies that the presumptive personal representative is still required to submit an affidavit in personal injury claims.

Highlighted Provisions:

This bill:

- makes it clear that presumptive personal representatives are required to submit affidavits in personal injury claims as required in other claims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-106.5, as last amended by Laws of Utah 2009, Chapter 46

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

Section 1. Section 78B-3-106.5 is amended to read:

78B-3-106.5. Claims brought by presumptive personal representative.

(1) "Presumptive personal representative" means:

(a) the spouse of the decedent not alleged to have contributed to the death of the decedent;

(b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of the decedent is alleged to have contributed to the death of the decedent, then an adult child of the decedent not alleged to have contributed to the death of the decedent; or

(c) if the spouse and all children of the decedent are incapacitated, or are alleged to have contributed to the death of the decedent, then a parent of the decedent.

(2) (a) Forty-five days after the death of a person, including a minor, caused by the wrongful act or neglect of another, the presumptive personal representative may present to an insurer and resolve with the insurer a claim for policy limits up to $25,000 for liability and uninsured motorist claims, [~~and~~] $10,000 for underinsured motorist claims, [~~arising out of that death to an insurer~~] and [~~may~~] execute [~~a~~] any applicable release of liability upon presentation of an affidavit, properly notarized, stating that:

[~~(a)~~] (i) the person presenting the affidavit is the presumptive personal representative;

[~~(b)~~] (ii) 45 days have elapsed since the death of the decedent;

[~~(c)~~] (iii) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

[~~(d)~~] (iv) notice of intent to resolve the claim has been sent to the last-known addresses of all heirs as defined by Section 78B-3-102 or 78B-3-105.

(b) Claims for personal injury protection benefits resulting from the death of an insured are exempt from the 45-day waiting requirement, but shall include all information required in Subsections (2)(a)(i), (iii), and (iv).

[~~(3) The presumptive personal representative may also present and resolve a claim for any applicable benefits payable under personal injury protection coverage, resulting from the death of an insured.~~]

[~~(4)~~] (3) The presumptive personal representative's claim shall be on behalf of all heirs of the decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative shall have the same duties toward other heirs as those duties provided in Sections 75-3-701 through 75-3-720.

[~~(5)~~] (4) Any insurer and its insured paying a claim arising out of the wrongful death of a person, including a minor, including but not limited to claims for uninsured or underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative upon presentation of an affidavit as described in Subsection (2) are discharged and released to the same extent as if the insurer and its insured dealt with a personal representative of the decedent. The insurer and its insured are not required to inquire into the truth of any statement in the affidavit.

[~~(6)~~] (5) Nothing in this section affects or prevents, to the limits of insurance protection only, any claim for first party benefits or a proceeding to establish the liability of a tort feasor insured under any policy of insurance in addition to the policy under which the claim was presented and paid under Subsection (2).

[~~(7)~~] (6) If any heirs are minors, the presumptive personal representative may not distribute more than 50% of the proceeds of the settlement until the distribution has been approved by a court approved settlement in which a conservator is appointed for any minor heirs.

CHAPTER 51
H. B. 21
Passed February 4, 2011
Approved March 18, 2011
Effective May 10, 2011

STATUTORILY REQUIRED REPORTS AMENDMENTS

Chief Sponsor: Don L. Ipson
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies the reporting requirements of agencies to the Judiciary and the Law Enforcement and Criminal Justice Interim Committees.

Highlighted Provisions:

This bill:

- changes some reports required of the Administrative Office of the Courts, the Judicial Council, and the Commission on Criminal and Juvenile Justice to be provided at the option of the Judiciary Interim Committee;
- requires that certain annual reports be provided in writing;
- amends reporting dates; and
- eliminates the requirement for the Emergency Medical Services Committee to report annually to the Law Enforcement and Criminal Justice Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-8a-103, as last amended by Laws of Utah 2010, Chapter 286
30-3-11.3, as last amended by Laws of Utah 2009, Chapter 146
30-3-11.4, as last amended by Laws of Utah 2008, Chapter 382
41-6a-511, as renumbered and amended by Laws of Utah 2005, Chapter 2
53-5-707, as last amended by Laws of Utah 2010, Chapter 62
63M-7-305, as last amended by Laws of Utah 2010, Chapter 39
64-13-6, as last amended by Laws of Utah 2004, Chapter 90
64-13e-106, as last amended by Laws of Utah 2008, Chapter 188
78A-8-109, as enacted by Laws of Utah 2008, Chapter 3
78B-6-204, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 26-8a-103 is amended to read:

26-8a-103. State Emergency Medical Services Committee -- Membership -- Expenses.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following 16 members appointed by the governor, at least five of whom must reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) one representative from a private ambulance provider;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may

organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

[~~(4) The committee shall submit a report in a form acceptable to the committee each November at the Law Enforcement and Criminal Justice Interim Committee meeting concerning its:~~]

[~~(a) funding priorities and recommended sources;~~]

[~~(b) closest responder recommendations;~~]

[~~(c) centralized dispatch;~~]

[~~(d) duplication of services and any taxing consequences;~~]

[~~(e) appropriate providers for emergency medical services; and~~]

[~~(f) recommendations and suggested legislation.~~]

[~~(5)~~] (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

[~~(6)~~] (5) Administrative services for the committee shall be provided by the department.

Section 2. Section 30-3-11.3 is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Exceptions.

[~~(1) There is established a mandatory course for divorcing parents as a pilot program in the third and fourth judicial districts to be administered by the Administrative Office of the Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be implemented in all judicial districts.~~]

(1) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties:

(a) about divorce and its impacts on:

(i) their child or children;

(ii) their family relationship; and

(iii) their financial responsibilities for their child or children; and

(b) that domestic violence has a harmful effect on children and family relationships.

(6) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (8).

(7) A certificate of completion constitutes evidence to the court of course completion by the parties.

(8) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of $8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

(10) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided [~~annually to~~] if requested by the Judiciary Interim Committee.

Section 3. Section 30-3-11.4 is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(4) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(5) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

(c) resources available to improve or strengthen the marriage;

(d) a discussion of the positive and negative consequences of divorce;

(e) a discussion of the process of divorce;

(f) options available for proceeding with a divorce, including:

(i) mediation;

(ii) collaborative law; and

(iii) litigation; and

(g) a discussion of post-divorce resources.

(6) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts.

(8) Each participant shall pay the costs of the course, which may not exceed $20, to the independent contractor providing the course at the time and place of the course.

(a) A fee of $5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

(b) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (8)(b).

(10) The Online Court Assistance Program shall include instructions with the forms for divorce which inform the petitioner of the requirement of this section.

(11) Both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court. A certificate of completion constitutes evidence to the court of course completion by the parties.

(12) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(13) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided [~~annually to~~] if requested by the Judiciary Interim Committee.

Section 4. Section 41-6a-511 is amended to read:

41-6a-511. Courts to collect and maintain data.

(1) The state courts shall collect and maintain data necessary to allow sentencing and enhancement decisions to be made in accordance with this part.

(2) (a) Each justice court shall transmit dispositions electronically to the Department of Public Safety in accordance with the requirement for recertification established by the Judicial Council.

(b) Immediately upon filling the requirements under Subsection (2)(a), a justice court shall collect and report the same DUI related data elements collected and maintained by the state courts under Subsection (1).

(3) The department shall maintain an electronic data base for DUI related records and data including the data elements received or collected from the courts under this section.

(4) (a) The Commission on Criminal and Juvenile Justice shall prepare an annual report of DUI related data including the following:

(i) the data collected by the courts under Subsections (1) and (2); and

(ii) any measures for which data are available to evaluate the profile and impacts of DUI recidivism and to evaluate the DUI related processes of:

(A) law enforcement;

(B) adjudication;

(C) sanctions;

(D) [~~drivers'~~] driver license control; and

(E) alcohol education, assessment, and treatment.

(b) The report shall be provided in writing to the Judiciary and Transportation Interim Committees no later than the last day of October following the end of the fiscal year for which the report is prepared.

Section 5. Section 53-5-707 is amended to read:

53-5-707. Permit -- Fees -- Disposition.

(1) (a) Each applicant for a permit shall pay a fee of $35 at the time of filing an application.

(b) The initial fee shall be waived for an applicant who is a law enforcement officer under Section 53-13-103.

(2) The renewal fee for the permit is $10.

(3) The replacement fee for the permit is $10.

(4) The late fee for the renewal permit is $7.50.

(5) The bureau shall use the fees collected under Subsections (1), (2), (3), and (4) as a dedicated credit to cover the costs of issuing concealed firearm permits under this part.

(6) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau shall promptly forward any fees collected under Subsection (6)(a) to the appropriate agency.

(7) The bureau shall make an annual report in writing to the Legislature's Law Enforcement and Criminal Justice Interim Committee on the amount and use of the fees collected under this section.

Section 6. Section 63M-7-305 is amended to read:

63M-7-305. Drug Offender Reform Act -- Coordination.

(1) As used in this section:

(a) "Council" means the Utah Substance Abuse Advisory Council.

(b) "Drug Offender Reform Act" and "act" mean the screening, assessment, substance abuse treatment, and supervision provided to convicted offenders under Subsection 77-18-1.1(2) to:

(i) determine offenders' specific substance abuse treatment needs as early as possible in the judicial process;

(ii) expand treatment resources for offenders in the community;

(iii) integrate treatment of offenders with supervision by the Department of Corrections; and

(iv) reduce the incidence of substance abuse and related criminal conduct.

(c) "Substance abuse authority" has the same meaning as in Section 17-43-201.

(2) The council shall provide ongoing oversight of the implementation, functions, and evaluation of the Drug Offender Reform Act.

(3) The council shall develop an implementation plan for the Drug Offender Reform Act. The plan shall:

(a) identify local substance abuse authority areas where the act will be implemented, in cooperation with the Division of Substance Abuse and Mental Health, the Department of Corrections, and the local substance abuse authorities;

(b) include guidelines on how funds appropriated under the act should be used;

(c) require that treatment plans under the act are appropriate for criminal offenders;

(d) include guidelines on the membership of local planning groups;

(e) include guidelines on the membership of the Department of Corrections' planning group under Subsection (5); and

(f) provide guidelines for the Commission on Criminal and Juvenile Justice to conduct an evaluation of the implementation, impact, and results of the act.

(4) (a) Each local substance abuse authority designated under Subsection (3) to implement the act shall establish a local planning group and shall submit a plan to the council detailing how the authority proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).

(b) Upon approval of the plan by the council, the Division of Substance Abuse and Mental Health shall allocate the funds.

(c) Local substance abuse authorities shall annually, on or before October 1, submit to the Division of Substance Abuse and Mental Health and to the council reports detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.

(5) (a) The Department of Corrections shall establish a planning group and shall submit a plan to the council detailing how the department proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).

(b) The Department of Corrections shall annually, [~~on or~~] before October 1, submit to the council a report detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.

(6) The council shall monitor the progress and evaluation of the act and shall provide a written report on the implementation, impact, and results of the act to the Law Enforcement and Criminal Justice and the Health and Human Services legislative interim committees annually [~~on or~~] before November [~~30~~] 1.

Section 7. Section 64-13-6 is amended to read:

64-13-6. Department duties.

(1) The department shall:

(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

(d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(f) manage programs that take into account the needs and interests of victims, where reasonable;

(g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;

(i) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals; and

(j) implement the provisions of [~~Section 77-28c-102~~] Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision.

(2) (a) By following the procedures in Subsection (2)(b), the department may investigate the following occurrences at state correctional facilities:

(i) criminal conduct of departmental employees;

(ii) felony crimes resulting in serious bodily injury;

(iii) death of any person; or

(iv) aggravated kidnaping.

(b) Prior to investigating any occurrence specified in Subsection (2)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (2)(a).

(3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

(4) The department shall provide data to the Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender treatability, the implementation and effectiveness of sex offender treatment, and the results of ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile Justice [~~will~~] shall then report these data in writing to the Judiciary Interim Committee, if requested by the committee, and to the appropriate appropriations subcommittee annually.

(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

Section 8. Section 64-13e-106 is amended to read:

64-13e-106. Report to Legislature.

[~~On or before September~~] Before November 1 of each year, the department shall provide to the Law Enforcement and Criminal Justice Interim Committee of the Legislature a written report regarding housing of state inmates, state parole inmates, and state probationary inmates under this chapter, including:

(1) the final state daily incarceration rate established under this chapter;

(2) the rates described in Subsections 64-13e-103(3) and 64-13e-104(2);

(3) participating counties;

(4) the number of state inmates housed by each county;

(5) the number of state parole inmates housed by each county; and

(6) the number of state probationary inmates housed by each county.

Section 9. Section 78A-8-109 is amended to read:

78A-8-109. Report to Judiciary Interim Committee.

The Judicial Council shall present to the Judiciary Interim Committee [~~not later than November 30 of each odd-numbered year~~], if requested by the committee, a report and recommendation concerning the maximum amount of small claims actions.

Section 10. Section 78B-6-204 is amended to read:

78B-6-204. Dispute Resolution Programs -- Director -- Duties -- Report.

(1) Within the Administrative Office of the Courts, there shall be a director of Dispute Resolution Programs, appointed by the state court administrator.

(2) The director shall be an employee of the Administrative Office of the Courts and shall be responsible for the administration of all court-annexed Dispute Resolution Programs. The director shall have duties, powers, and responsibilities as the Judicial Council may determine. The qualifications for employment of the director shall be based on training and experience in the management, principles, and purposes of alternative dispute resolution procedures.

(3) In order to implement the purposes of this part, the Administrative Office of the Courts may employ or contract with ADR providers or ADR organizations on a case-by-case basis, on a service basis, or on a program basis. ADR providers and organizations shall be subject to the rules and fees set by the Judicial Council. The Administrative Office of the Courts shall establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures.

(4) An ADR provider is immune from all liability when conducting proceedings under the rules of the Judicial Council and the provisions of this part, except for wrongful disclosure of confidential information, to the same extent as a judge of the courts in this state.

(5) (a) The director shall report annually to the Supreme Court, the Judicial Council, [~~the Judiciary Interim Committee,~~] the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.

(b) The director shall provide the report to the Judiciary Interim Committee, if requested by the committee.

[~~(a)~~] (c) Copies of the report shall be available to the public at the Administrative Office of the Courts.

[~~(b)~~] (d) The report shall include:

(i) identification of participating judicial districts and the methods of alternative dispute resolution that are available in those districts;

(ii) the number and types of disputes received;

(iii) the methods of alternative dispute resolution to which the disputes were referred;

(iv) the course of the referral;

(v) the status of cases referred to alternative dispute resolution or the disposition of these disputes; and

(vi) any problems encountered in the administration of the program and the recommendations of the director as to the continuation or modification of any program.

[~~(c)~~] (e) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

CHAPTER 52
H. B. 36
Passed February 10, 2011
Approved March 18, 2011
Effective May 10, 2011

ASSESSMENT, COLLECTIONS, AND REFUNDS ACT AMENDMENTS

Chief Sponsor: Todd E. Kiser
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends the Assessment, Collections, and Refunds Act part to address exceptions to the applicability of the part.

Highlighted Provisions:

This bill:

- provides that the Assessment, Collections, and Refunds Act does not apply to the Property Tax Act, Tax Equivalent Property Act, or the Privilege Tax part.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
59-1-1402.1, Utah Code Annotated 1953

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

Section 1. Section 59-1-1402.1 is enacted to read:

59-1-1402.1. Exceptions to applicability of this part.

This part does not apply to:

(1) Chapter 2, Property Tax Act;

(2) Chapter 3, Tax Equivalent Property Act; or

(3) Chapter 4, Privilege Tax.

CHAPTER 53
H. B. 37
Passed February 10, 2011
Approved March 18, 2011
Effective May 10, 2011
(Retrospective operation to January 1, 2011)

DETERMINATION OF STATE TAXABLE INCOME

Chief Sponsor: Evan J. Vickers
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act to address the determination of state taxable income.

Highlighted Provisions:

This bill:

- addresses the determination of state taxable income derived from Utah sources; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-10-117, as last amended by Laws of Utah 2009, Chapter 312
59-10-536, as last amended by Laws of Utah 2009, Chapter 212

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

Section 1. Section 59-10-117 is amended to read:

59-10-117. State taxable income derived from Utah sources.

(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes those items includable in state taxable income attributable to or resulting from:

(a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as defined by Section 613(c), Internal Revenue Code, is derived; [~~or~~]

(b) the carrying on of a business, trade, profession, or occupation in this state[~~.~~];

(c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent the addition was previously subtracted from state taxable income;

(d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent the refund subtracted is related to a tax imposed by this state; or

(e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent the adjustment is related to an item described in Subsections (1)(a) through (d).

(2) For the purposes of Subsection (1):

(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;

(b) a deduction with respect to a capital loss, net long-term capital gain, or net operating loss shall be based solely on income, gain, loss, and deduction connected with Utah sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as the corresponding federal deductions;

(c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources;

(d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and deduction derived from or connected with Utah sources shall be determined under Section 59-10-118;

(e) a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, may not be considered to carry on a trade, business, profession, or occupation in this state solely by reason of the purchase or sale of property for the nonresident's own account;

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state, an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118;

(g) a nonresident partner's distributive share of partnership income, gain, loss, deduction, or credit derived from or connected with Utah sources shall be determined under Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

(h) the share of a nonresident estate or trust or a nonresident beneficiary of any estate or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall be determined under Section 59-10-207; and

(i) any dividend, interest, or distributive share of income, gain, or loss from a real estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in the trust, shall be income from intangible personal property under Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the nonresident investor is employing its beneficial interest in the trust in a trade, business, profession, or occupation carried on by the investor in this state.

Section 2. Section 59-10-536 is amended to read:

59-10-536. Assessment and collection of tax -- Change on federal income tax return -- Taxpayer requirement to make certain filings with the commission.

(1) (a) If, before the expiration of the time prescribed in this section for the assessment of a tax, the commission and the taxpayer agree in writing to the assessment of the tax in a time period after the time period prescribed in this section for the assessment of a tax, the tax may be assessed at any time before the expiration of the period to which the commission and the taxpayer agree.

(b) A time period that the commission and a taxpayer agree upon under Subsection (1)(a) may be extended by written agreement:

(i) between the commission and the taxpayer; and

(ii) made before the expiration of the time period that the commission and the taxpayer previously agreed upon.

(2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

(ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because the taxpayer files an amended federal income tax return, the taxpayer shall file with the commission within 90 days after the date the taxpayer files the amended federal income tax return:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

(iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability.

(b) (i) Subject to Subsection (2)(b)(iii), the commission may assess a deficiency in state income taxes within three years after a notification or amended federal income tax return described in Subsection (2)(a) is filed.

(ii) The amount of an assessment of tax under this Subsection (2)(b) may not exceed the amount of the increase in Utah tax attributable to the change described in Subsection (2)(a).

(iii) If a taxpayer fails to report to the commission a change specified in this Subsection (2)(b), the assessment may be made at any time within six years after the date of the change.

(3) If a deficiency in federal income tax required to be reported is attributable to a net operating loss carry back or carry forward, a deficiency in the tax imposed by this chapter may be assessed within three years from the due date of the return for the taxable year of the net operating loss.

(4) Except as provided in Subsections (1) through (3), this section does not affect the time within which or the amount for which an assessment may otherwise be made.

(5) (a) An erroneous refund shall be considered an underpayment of tax on the date the commission makes the erroneous refund.

(b) An assessment of a deficiency arising out of an erroneous refund may be made at any time within three years from the date the refund is made, except that an assessment may be made within five years from the time the refund is made if any part of the refund is induced by fraud or misrepresentation of a material fact.

(6) (a) Subject to Subsection (6)(b), if a return is required for a decedent or for the decedent's estate during the period of administration, the tax shall be assessed within 18 months after written request for the assessment:

(i) made after the return is filed; and

(ii) by:

(A) the personal representative; or

(B) another person representing the estate of the decedent.

(b) Except as otherwise provided in this section, the assessment described in Subsection (6)(a) may not be made more than three years after the time the return is filed.

(7) (a) The amount of a tax imposed by this chapter may be assessed at any time within six years after the time the return is filed if:

(i) a resident individual, resident estate, or resident trust omits from gross income as reported for federal income tax purposes an amount properly includable in adjusted gross income, which is in excess of 25% of the amount of gross income stated in the return; or

(ii) a nonresident individual, nonresident estate, or nonresident trust omits from gross income as reported for federal income tax purposes an amount of adjusted gross income derived from Utah sources [~~as defined by~~] determined in accordance with Section 59-10-117, properly includable in adjusted gross income, [~~which~~] that is in excess of 25% of the amount of adjusted gross income derived from Utah sources which is reflected in the return.

(b) For purposes of Subsection (7)(a)(ii), there may not be taken into account any amount that is omitted in the return if the amount is disclosed:

(i) (A) in the return; or

(B) in a statement attached to the return; and

(ii) in a manner adequate to apprise the commission of the nature and amount of the item.

Section 3. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2011.

CHAPTER 54
H. B. 38
Passed February 10, 2011
Approved March 18, 2011
Effective May 10, 2011

SEVERANCE TAX AMENDMENTS

Chief Sponsor: Evan J. Vickers
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends the Oil and Gas Severance Tax part to address the interests in oil or gas or the proceeds of production of oil or gas that are not subject to the severance tax.

Highlighted Provisions:

This bill:

- provides that certain interests of the United States, the state, a political subdivision of the state, or an Indian or Indian tribe in oil or gas or the proceeds of production of oil or gas are not subject to the severance tax on oil and gas; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-5-102, as last amended by Laws of Utah 2010, Chapter 323

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

Section 1. Section 59-5-102 is amended to read:

59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit -- Tax rate reduction -- Study by Tax Review Commission.

(1) [~~Each~~] (a) Subject to Subsection (1)(b), a person owning an interest[~~,~~] in oil or gas produced from a well in the state, including a working interest, royalty interest, [~~payments~~] payment out of production, or any other interest, [~~in oil or gas produced from a well in the state,~~] or in the proceeds of the production of oil or gas, shall pay to the state a severance tax on the basis of the value determined under Section 59-5-103.1 of the oil or gas:

[~~(a)~~] (i) produced; and

[~~(b) (i)~~] (ii) (A) saved;

[~~(ii)~~] (B) sold; or

[~~(iii)~~] (C) transported from the field where the substance was produced.

(b) This section applies to an interest in oil or gas produced from a well in the state or in the proceeds of the production of oil or gas produced from a well in the state except for:

(i) an interest of the United States in oil or gas or in the proceeds of the production of oil or gas;

(ii) an interest of the state or a political subdivision of the state in oil or gas or in the proceeds of the production of oil or gas; or

(iii) an interest of an Indian or Indian tribe as defined in Section 9-9-101 in oil or gas or in the proceeds of the production of oil or gas produced from land under the jurisdiction of the United States.

(2) (a) Subject to Subsection (2)(d), the severance tax rate for oil is as follows:

(i) 3% of the value of the oil up to and including the first $13 per barrel for oil; and

(ii) 5% of the value of the oil from $13.01 and above per barrel for oil.

(b) Subject to Subsection (2)(d), the severance tax rate for natural gas is as follows:

(i) 3% of the value of the natural gas up to and including the first $1.50 per MCF for gas; and

(ii) 5% of the value of the natural gas from $1.51 and above per MCF for gas.

(c) Subject to Subsection (2)(d), the severance tax rate for natural gas liquids is 4% of the value of the natural gas liquids.

(d) (i) On or before December 15, 2004, the Office of the Legislative Fiscal Analyst and the Governor's Office of Planning and Budget shall prepare a revenue forecast estimating the amount of revenues that:

(A) would be generated by the taxes imposed by this part for the calendar year beginning on January 1, 2004 had 2004 General Session S.B. 191 not taken effect; and

(B) will be generated by the taxes imposed by this part for the calendar year beginning on January 1, 2004.

(ii) Effective on January 1, 2005, the tax rates described in Subsections (2)(a) through (c) shall be:

(A) increased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated under Subsection (2)(d)(i)(B) is less than the amount of revenues estimated under Subsection (2)(d)(i)(A); or

(B) decreased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated under Subsection (2)(d)(i)(B) is greater than the amount of revenues estimated under Subsection (2)(d)(i)(A).

(iii) For purposes of Subsection (2)(d)(ii):

(A) subject to Subsection (2)(d)(iv)(B):

(I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax rates shall be by the amount necessary to generate for the calendar year beginning on January 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or

(II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the tax rates shall be by the amount necessary to reduce for the calendar year beginning on January 1, 2005 revenues equal to the amount by which the revenues estimated under Subsection (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and

(B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in proportion to the amount of revenues generated by each tax rate under this part for the calendar year beginning on January 1, 2003.

(iv) (A) The commission shall calculate any tax rate increase or decrease required by Subsection (2)(d)(ii) using the best information available to the commission.

(B) If the tax rates described in Subsections (2)(a) through (c) are increased or decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each person required to file a return under this part stating the tax rate in effect on January 1, 2005 as a result of the increase or decrease.

(3) If oil or gas is shipped outside the state:

(a) the shipment constitutes a sale; and

(b) the oil or gas is subject to the tax imposed by this section.

(4) (a) Except as provided in Subsection (4)(b), if the oil or gas is stockpiled, the tax is not imposed until the oil or gas is:

(i) sold;

(ii) transported; or

(iii) delivered.

(b) Notwithstanding Subsection (4)(a), if oil or gas is stockpiled for more than two years, the oil or gas is subject to the tax imposed by this section.

(5) A tax is not imposed under this section upon:

(a) stripper wells, unless the exemption prevents the severance tax from being treated as a deduction for federal tax purposes;

(b) the first 12 months of production for wildcat wells started after January 1, 1990; or

(c) the first six months of production for development wells started after January 1, 1990.

(6) (a) Subject to Subsections (6)(b) and (c), a working interest owner who pays for all or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit equal to 20% of the amount paid.

(b) The tax credit under Subsection (6)(a) for each recompletion or workover may not exceed $30,000 per well during each calendar year.

(c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar year may be carried forward for the next three calendar years.

(7) A 50% reduction in the tax rate is imposed upon the incremental production achieved from an enhanced recovery project.

(8) The taxes imposed by this section are:

(a) in addition to all other taxes provided by law; and

(b) delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year when the oil or gas is:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field.

(9) With respect to the tax imposed by this section on each owner of oil or gas or in the proceeds of the production of those substances produced in the state, each owner is liable for the tax in proportion to the owner's interest in the production or in the proceeds of the production.

(10) The tax imposed by this section shall be reported and paid by each producer that takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of each owner entitled to participate in the oil or gas sold by the producer or transported by the producer from the field where the oil or gas is produced.

(11) Each producer shall deduct the tax imposed by this section from the amounts due to other owners for the production or the proceeds of the production.

(12) (a) The Tax Review Commission shall review the applicability of the tax provided for in this chapter to coal-to-liquids, oil shale, and tar sands technology on or before the October 2011 interim meeting.

(b) The Tax Review Commission shall address in its review the cost and benefit of not applying the tax provided for in this chapter to coal-to-liquids, oil shale, and tar sands technology.

(c) The Tax Review Commission shall report its findings and recommendations under this Subsection (12) to the Revenue and Taxation Interim Committee on or before the November 2011 interim meeting.

CHAPTER 55
H. B. 80
Passed March 1, 2011
Approved March 18, 2011
Effective May 10, 2011

EMERGENCY MANAGEMENT

Chief Sponsor: Curtis Oda
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies the Public Safety Code relating to the name and duties of the Division of Homeland Security.

Highlighted Provisions:

This bill:

- changes the name of the Division of Homeland Security to the Division of Emergency Management;
- specifies the responsibilities of the division relating to emergency management as directed by the governor or commissioner of the Department of Public Safety, including:
  - coordinating with state and local governments the use of personnel and resources during a disaster;
  - requesting or assisting in the allocation of state and local resources for a disaster or a local state of emergency;
  - receiving and disbursing federal resources provided to the state in a declared disaster; and
  - appointing a state coordinating officer, as the governor's representative, to work with a federal coordinating officer during a federally declared disaster;
- authorizes the department to designate geographical regions for the purpose of emergency planning within the state, and allows the political subdivisions within each region to:
  - coordinate planning with other political subdivisions and tribal governments within that region and with state agencies;
  - coordinate grant management and resource purchases; and
  - organize joint emergency response training and exercises;
- provides that political subdivisions within a region may not establish the region as a new governmental entity in the federal disaster declaration process;
- authorizes the division to:
  - receive and maintain an inventory of state and local services, equipment, supplies, personnel, and other resources related to participation in the Statewide Mutual Aid Act and the Emergency Management Assistance Compact; and
  - make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to prepare and coordinate a process so that the division may assist political subdivisions that are acting as agents of the state in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster;
- makes clarifying changes; and
- provides rulemaking authority.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-3-112, as last amended by Laws of Utah 2007, Chapter 66
26-23b-110, as last amended by Laws of Utah 2008, Chapter 382
53-1-104, as last amended by Laws of Utah 2010, Chapter 62
53-2-102, as last amended by Laws of Utah 2010, Chapter 334
53-2-103, as last amended by Laws of Utah 2007, Chapter 66
53-2-104, as last amended by Laws of Utah 2008, Chapter 382
53-2-108, as last amended by Laws of Utah 2010, Chapter 286
53-2-502, as last amended by Laws of Utah 2008, Chapter 360
53-2-505, as enacted by Laws of Utah 2007, Chapter 331
53-2-506, as enacted by Laws of Utah 2007, Chapter 331
53-2-507, as enacted by Laws of Utah 2007, Chapter 331
53-2-509, as last amended by Laws of Utah 2008, Chapter 382
63C-6-101, as last amended by Laws of Utah 2007, Chapter 66
63C-6-104, as last amended by Laws of Utah 2007, Chapter 66
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
63J-4-502, as last amended by Laws of Utah 2010, Chapter 286
63K-1-102, as last amended by Laws of Utah 2010, Chapter 334
63K-1-301, as renumbered and amended by Laws of Utah 2008, Chapter 382
63K-3-201, as last amended by Laws of Utah 2010, Chapter 286
63K-4-402, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-4-201, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 19-3-112 is amended to read:

19-3-112. Notification by the department to certain persons of release of radiation from Nevada Test Site -- Notification to certain news outlets.

(1) When informed by the United States Department of Energy of any release of radiation exceeding the Nuclear Regulatory Commission's limits for unrestricted use in air or water from the

Nevada Test Site which is detected outside its boundaries, the department shall, unless prohibited by federal law, immediately convey to the persons specified in Subsection (2) all information that is made available to it, including:

(a) the date;

(b) the time and duration of each release of radiation;

(c) estimates of total amounts of radiation released;

(d) the types and amounts of each isotope detected off-site;

(e) the locations of monitoring stations detecting off-site radiation; and

(f) current and projected wind direction, wind velocity, and precipitation for the region.

(2) Unless prohibited by federal law, the department shall provide the information required under Subsection (1) to the following:

(a) members of the Utah congressional delegation or their designated representatives;

(b) the director of the Division of [~~Homeland Security~~] Emergency Management;

(c) the attorney general;

(d) the regional director of the Federal Emergency Management Agency;

(e) the regional director of the National Oceanic and Atmospheric Administration;

(f) the executive director of the Utah League of Cities and Towns;

(g) the executive director of the Department of Health; and

(h) the chairpersons of the county commissions of affected counties.

(3) If the state is informed by the United States Department of Energy that any radiation released from the Nevada Test Site has been detected by the United States Department of Energy or United States Environmental Protection Agency or the department within the boundaries of the state of Utah, the department shall, unless prohibited by federal law, immediately provide all information available to it as specified in Subsection (1) to the Associated Press and United Press International outlets in the state.

Section 2. Section 26-23b-110 is amended to read:

26-23b-110. Information sharing with public safety authorities.

(1) For purposes of this section, "public safety authority" means a local, state, or federal law enforcement authority including the Division of [~~Homeland Security~~] Emergency Management, emergency medical services personnel, and firefighters.

(2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act:

(a) whenever a public safety authority suspects a case of a reportable illness or condition under the provisions of this chapter, it shall immediately notify the department;

(b) whenever the department learns of a case of a reportable illness or condition under this chapter that it reasonably believes has the potential to be caused by one of the factors listed in Subsection 26-23b-103(1), it shall immediately notify the appropriate public safety authority; and

(c) sharing of information reportable under the provisions of this chapter between persons authorized by this chapter shall be limited to information necessary for the treatment, control, investigation, and prevention of a public health emergency.

(3) Except to the extent inconsistent with this chapter, Sections 26-6-27 and 26-6-28 apply to this chapter.

Section 3. Section 53-1-104 is amended to read:

53-1-104. Boards, bureaus, councils, divisions, and offices.

(1) The following are the policymaking boards within the department:

(a) the Driver License Medical Advisory Board, created in Section 53-3-303;

(b) the Concealed Firearm Review Board, created in Section 53-5-703;

(c) the Utah Fire Prevention Board, created in Section 53-7-203;

(d) the Liquified Petroleum Gas Board, created in Section 53-7-304; and

(e) the Private Investigator Hearing and Licensure Board, created in Section 53-9-104.

(2) The following are the councils within the department:

(a) the Peace Officer Standards and Training Council, created in Section 53-6-106; and

(b) the Motor Vehicle Safety Inspection Advisory Council, created in Section 53-8-203.

(3) The following are the divisions within the department:

(a) the Administrative Services Division, created in Section 53-1-203;

(b) the Management Information Services Division, created in Section 53-1-303;

(c) the Division of [~~Homeland Security~~] Emergency Management, created in Section 53-2-103;

(d) the Driver License Division, created in Section 53-3-103;

(e) the Criminal Investigations and Technical Services Division, created in Section 53-10-103;

(f) the Peace Officers Standards and Training Division, created in Section 53-6-103;

(g) the State Fire Marshal Division, created in Section 53-7-103; and

(h) the Utah Highway Patrol Division, created in Section 53-8-103.

(4) The Office of Executive Protection is created in Section 53-1-112.

(5) The following are bureaus within the department:

(a) Bureau of Criminal Identification, created in Section 53-10-201;

(b) State Bureau of Investigation, created in Section 53-10-301;

(c) Bureau of Forensic Services, created in Section 53-10-401; and

(d) Bureau of Communications, created in Section 53-10-501.

Section 4. Section 53-2-102 is amended to read:

53-2-102. Definitions.

As used in this part:

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

(2) "Director" means the division director appointed under Section 53-2-103.

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

(4) "Division" means the Division of [~~Homeland Security~~] Emergency Management created in Section 53-2-103.

(5) "Energy" includes the energy resources defined in Section 63K-2-103.

(6) "Expenses" means actual labor costs of government and volunteer personnel, including [~~workers~~] workers' compensation benefits, fringe benefits, administrative overhead, cost of equipment, cost of equipment operation, cost of materials, and the cost of any contract labor and materials.

(7) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment and requires immediate action to mitigate the threat.

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

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

(10) "State of emergency" means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, or safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

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

(12) "Terrorism" means activities that:

(a) involve acts dangerous to human life;

(b) are a violation of the criminal laws of the United States or of this state; and

(c) to a reasonable person, would appear to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping.

Section 5. Section 53-2-103 is amended to read:

53-2-103. Division of Emergency Management -- Creation -- Director -- Appointment -- Term -- Compensation.

(1) There is created within the department the Division of [~~Homeland Security~~] Emergency Management.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from [~~his~~] the position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 6. Section 53-2-104 is amended to read:

53-2-104. Division duties -- Powers.

(1) The division shall:

(a) respond to the policies of the governor and the Legislature;

(b) perform functions relating to emergency [~~services and homeland security matters~~]

management as directed by the governor or by the commissioner[~~;~~], including:

(i) coordinating with state agencies and local governments the use of personnel and other resources of these governmental entities as agents of the state during an interstate disaster in accordance with the Emergency Management Assistance Compact described in Section 53-2-202;

(ii) coordinating the requesting, activating, and allocating of state resources during an intrastate disaster or a local state of emergency;

(iii) receiving and disbursing federal resources provided to the state in a declared disaster; and

(iv) appointing a state coordinating officer who is the governor's representative and who shall work with a federal coordinating officer during a federally declared disaster;

(c) prepare, implement, and maintain programs and plans to provide for:

(i) prevention and minimization of injury and damage caused by disasters;

(ii) prompt and effective response to and recovery from disasters;

(iii) identification of areas particularly vulnerable to disasters;

(iv) coordination of hazard mitigation and other preventive and preparedness measures designed to eliminate or reduce disasters;

(v) assistance to local officials, state agencies, and the business and public sectors, in developing emergency action plans;

(vi) coordination of federal, state, and local emergency activities;

(vii) coordination of emergency operations plans with emergency plans of the federal government;

(viii) coordination of search and rescue activities;

(ix) coordination of rapid and efficient communications in times of emergency; and

(x) other measures necessary, incidental, or appropriate to this part;

(d) coordinate with local officials, state agencies, and the business and public sectors in developing, implementing, and maintaining a state energy emergency plan in accordance with Section 53-2-110; and

(e) administer Part 4, Disaster Recovery Funding Act, in accordance with that part.

(2) (a) The department shall designate state geographical regions and allow the political subdivisions within each region to:

(i) coordinate planning with other political subdivisions, tribal governments, and as appropriate, other entities within that region and with state agencies as appropriate, or as designated by the division;

(ii) coordinate grant management and resource purchases; and

(iii) organize joint emergency response training and exercises.

(b) The political subdivisions within a region designated in Subsection (2)(a) may not establish the region as a new government entity in the federal disaster declaration process, which runs in the following order:

(i) local governmental entities;

(ii) counties;

(iii) the state; and

(iv) the federal government.

(3) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish protocol for prevention, mitigation, preparedness, response, recovery, and the activities described in Subsection (2);

(b) coordinate federal, state, and local resources in a declared disaster or local emergency; and

(c) implement provisions of the Emergency Management Assistance Compact as provided in Section 53-2-202 and Title 53, Chapter 2, Part 5, Statewide Mutual Aid Act.

[~~(2)~~] (4) The division may consult with the Legislative Management Committee, the Judicial Council, and legislative and judicial staff offices to assist them in preparing emergency succession plans and procedures under Title 63K, Chapter 1, Emergency Interim Succession Act.

Section 7. Section 53-2-108 is amended to read:

53-2-108. Search and Rescue Advisory Board -- Members -- Compensation.

(1) There is created the Search and Rescue Advisory Board consisting of seven members appointed as follows:

(a) two representatives designated by the Utah Search and Rescue Association, one of whom is from a county having a population of 75,000 or more; and one from a county having a population of less than 75,000;

(b) three representatives designated by the Utah Sheriff's Association, at least one of whom shall be a member of a voluntary search and rescue unit operating in the state, at least one of whom shall be from a county having a population of 75,000 or more, and at least one of whom shall be from a county having a population of less than 75,000;

(c) one representative of the Division of [~~Homeland Security~~] Emergency Management designated by the director; and

(d) one private citizen appointed by the governor with the consent of the Senate.

(2) (a) The term of each member of the board is four years.

(b) A member may be reappointed to successive terms.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(d) In order to stagger the terms of membership, the members appointed or reappointed to represent the Utah Sheriff's Association on or after May 2, 2005, shall serve a term of two years, and all subsequent terms shall be four years.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 8. Section 53-2-502 is amended to read:

53-2-502. Definitions.

As used in this part:

(1) "Committee" means the statewide mutual aid committee established in Section 53-2-503.

(2) "Director" means the director of the division, appointed under Section 53-2-103 or the director's designee.

(3) "Division" means the Division of [~~Homeland Security~~] Emergency Management, created under Section 53-2-103.

(4) "Emergency responder":

(a) means a person in the public or private sector:

(i) who has special skills, qualification, training, knowledge, or experience, whether or not possessing a license, certificate, permit, or other official recognition for the skills, qualification, training, knowledge, or experience, that would benefit a participating political subdivision in responding to a locally declared emergency or in an authorized drill or exercise; and

(ii) [~~that~~] whom a participating political subdivision requests or authorizes to assist in responding to a locally declared emergency or in an authorized drill or exercise; and

(b) includes:

(i) a law enforcement officer;

(ii) a firefighter;

(iii) an emergency medical services worker;

(iv) a physician, nurse, or other public health worker;

(v) an emergency management official;

(vi) a public works worker;

(vii) a building inspector;

(viii) an architect, engineer, or other design professional; or

(ix) a person with specialized equipment operations skills or training or with any other skills needed to provide aid in a declared emergency.

(5) "Participating political subdivision" means each county, municipality, public safety district, and public safety interlocal entity that has not adopted a resolution under Section 53-2-506 withdrawing itself from the statewide mutual aid system.

(6) "Public safety interlocal entity" means an interlocal entity under Title 11, Chapter 13, Interlocal Cooperation Act, that provides public safety service.

(7) "Public safety service" means a service provided to the public to protect life and property and includes fire protection, police protection, emergency medical service, and hazardous material response service.

(8) "Public safety district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, that provides public safety service.

(9) "Requesting political subdivision" means a participating political subdivision that requests emergency assistance under Section 53-2-507 from one or more other participating political subdivisions.

(10) "Responding political subdivision" means a participating political subdivision that responds to a request under Section 53-2-507 from a requesting political subdivision.

(11) "State" means the state of Utah.

[~~(11)~~] (12) "Statewide mutual aid system" or "system" means the aggregate of all participating political subdivisions and the state.

Section 9. Section 53-2-505 is amended to read:

53-2-505. Agreements not affected by this part.

Nothing in this part may be construed:

(1) to limit the state, a county, municipality, local district, special service district, or interlocal entity from entering into an agreement allowed by law for public safety and related purposes; or

(2) to affect an agreement to which the state, a county, municipality, local district, special service district, or interlocal entity is a party.

Section 10. Section 53-2-506 is amended to read:

53-2-506. Duties of the Division of Emergency Management and participating political subdivisions.

(1) The division shall:

(a) receive and maintain an inventory of the state and local services, equipment, supplies, personnel, and other resources related to participation in Title 53, Chapter 2, Part 2, Emergency Management Assistance Compact, and Title 53, Chapter 2, Part 5, Statewide Mutual Aid Act; and

(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to prepare and coordinate a process and plans so that the division may assist political subdivisions that are acting as agents of the state in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster as provided in Title 53, Chapter 2, Part 2, Emergency Management Assistance Compact.

(2) Each participating political subdivision in the Statewide Mutual Aid Act shall:

[~~(1)~~] (a) identify potential hazards that could affect the participating political subdivision;

[~~(2)~~] (b) conduct joint planning, intelligence sharing, and threat assessment development with contiguous participating political subdivisions and conduct joint training with them at least biennially;

[~~(3)~~] (c) identify and inventory the services, equipment, supplies, personnel, and other resources related to participating political subdivision's planning, prevention, mitigation, response, and recovery activities; and

[~~(4)~~] (d) adopt and implement the standardized incident management system approved by the division.

Section 11. Section 53-2-507 is amended to read:

53-2-507. Requests for disaster assistance or assistance with an authorized drill or exercise.

(1) [~~A~~] The state or a participating political subdivision may request another participating political subdivision to assist:

(a) in preventing, mitigating, responding to, or recovering from a disaster, if the requesting political subdivision or the state has declared a state of emergency; or

(b) with a drill or exercise that the state or requesting political subdivision has authorized.

(2) Each request under Subsection (1) shall be:

(a) made by the chief executive officer of the state or participating political subdivision, or the officer's designee; and

(b) reported as soon as practical to the director.

(3) (a) A request under Subsection (1) may be communicated orally or in writing.

(b) Each request communicated orally shall be reduced to writing and delivered to the other participating political subdivision:

(i) as soon as practical; or

(ii) [~~in~~] within the number of days specified by the director.

(4) In responding to a request under Subsection (1), a responding political subdivision may:

(a) donate assets of any kind to a requesting political subdivision; and

(b) withhold its resources to the extent necessary to provide reasonable protection and services for its own residents.

(5) The emergency response personnel, equipment, and other assets of a responding political subdivision or the state shall be under the operational control of the incident management system of the state or requesting political subdivision, except to the extent that the exercise of operational control would result in a violation of a policy, standard, procedure, or protocol of the responding political subdivision or of the state.

Section 12. Section 53-2-509 is amended to read:

53-2-509. Personnel responding to requests for assistance.

(1) Each person or entity holding a license, certificate, or other permit evidencing qualification in a professional, mechanical, or other skill and responding to a request from a requesting political subdivision shall, while providing assistance during a declared emergency or during an authorized drill or exercise, be considered to be licensed, certified, or permitted in the requesting political subdivision, except as limited by the chief executive officer of the requesting political subdivision.

(2) Each law enforcement officer rendering aid as provided in this part under the authority of a state of emergency declared by the governor, whether inside or outside the officer's jurisdiction, [~~shall have~~] has all law enforcement powers and the same privileges and immunities that the officer has in the officer's own jurisdiction.

(3) Each employee of a responding political subdivision responding to a request by or giving assistance to a requesting political subdivision or the state as provided in this part:

(a) is entitled to:

(i) all applicable workers compensation benefits for injury or death occurring as a result of the employee's participation in the response or assistance; and

(ii) any additional state or federal benefits available for line of duty injury or death; and

(b) is, for purposes of liability, considered to be an employee of the requesting political subdivision.

(4) Each responding political subdivision and its employees are immune from liability arising out of their actions in responding to a request from a requesting political subdivision to the extent provided in Section 63G-7-201.

Section 13. Section 63C-6-101 is amended to read:

63C-6-101. Creation of commission -- Membership -- Appointment -- Vacancies.

(1) There is created the Utah Seismic Safety Commission consisting of 15 members, designated as follows:

(a) the director of the Division of [~~Homeland Security or his~~] Emergency Management or the director's designee;

(b) the director of the Utah Geological Survey or [~~his~~] the director's designee;

(c) the director of the University of Utah Seismograph Stations or [~~his~~] the director's designee;

(d) the executive director of the Utah League of Cities and Towns or [~~his~~] the executive director's designee;

(e) a representative from the Structural Engineers Association of Utah biannually selected by its membership;

(f) the director of the Division of Facilities Construction and Management or [~~his~~] the director's designee;

(g) the executive director of the Department of Transportation or [~~his~~] the director's designee;

(h) the State Planning Coordinator or [~~his~~] the coordinator's designee;

(i) a representative from the American Institute of Architects, Utah Section;

(j) a representative from the American Society of Civil Engineers, Utah Section;

(k) a member of the House of Representatives appointed biannually by the speaker of the House;

(l) a member of the Senate appointed biannually by the president of the Senate;

(m) the commissioner of the Department of Insurance or [~~his~~] the commissioner's designee;

(n) a representative from the Association of Contingency Planners, Utah Chapter, biannually selected by its membership; and

(o) a representative from the American Public Works Association, Utah Chapter, biannually selected by its membership.

(2) The commission shall annually select one of its members to serve as chair of the commission.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

Section 14. Section 63C-6-104 is amended to read:

63C-6-104. Staffing and appropriated funds.

(1) Staff support to the commission shall be provided by the Division of [~~Homeland Security~~] Emergency Management and the Utah Geological Survey.

(2) [~~Monies~~] Money not expended by the Utah Seismic Safety Commission during a fiscal year are nonlapsing except that any balance of General Fund [~~monies~~] money greater than $10,000 lapses to the General Fund.

Section 15. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and

has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of ~~[Homeland Security]~~ Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of ~~[Homeland Security]~~ Emergency Management information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; and

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality.

Section 16. Section 63J-4-502 is amended to read:

63J-4-502. Membership -- Terms -- Chair -- Expenses.

(1) The Resource Development Coordinating Committee shall consist of the following 25 members:

(a) the state science advisor;

(b) a representative from the Department of Agriculture and Food appointed by the executive director;

(c) a representative from the Department of Community and Culture appointed by the executive director;

(d) a representative from the Department of Environmental Quality appointed by the executive director;

(e) a representative from the Department of Natural Resources appointed by the executive director;

(f) a representative from the Department of Transportation appointed by the executive director;

(g) a representative from the Governor's Office of Economic Development appointed by the director;

(h) a representative from the Division of Housing and Community Development appointed by the director;

(i) a representative from the Division of State History appointed by the director;

(j) a representative from the Division of Air Quality appointed by the director;

(k) a representative from the Division of Drinking Water appointed by the director;

(l) a representative from the Division of Environmental Response and Remediation appointed by the director;

(m) a representative from the Division of Radiation appointed by the director;

(n) a representative from the Division of Solid and Hazardous Waste appointed by the director;

(o) a representative from the Division of Water Quality appointed by the director;

(p) a representative from the Division of Oil, Gas, and Mining appointed by the director;

(q) a representative from the Division of Parks and Recreation appointed by the director;

(r) a representative from the Division of Forestry, Fire, and State Lands appointed by the director;

(s) a representative from the Utah Geological Survey appointed by the director;

(t) a representative from the Division of Water Resources appointed by the director;

(u) a representative from the Division of Water Rights appointed by the director;

(v) a representative from the Division of Wildlife Resources appointed by the director;

(w) a representative from the School and Institutional Trust Lands Administration appointed by the director;

(x) a representative from the Division of Facilities Construction and Management appointed by the director; and

(y) a representative from the Division of [~~Homeland Security~~] Emergency Management appointed by the director.

(2) (a) As particular issues require, the committee may, by majority vote of the members present, and with the concurrence of the state planning coordinator, appoint additional temporary members to serve as ex officio voting members.

(b) Those ex officio members may discuss and vote on the issue or issues for which they were appointed.

(3) A chair shall be selected by a majority vote of committee members with the concurrence of the state planning coordinator.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 17. Section 63K-1-102 is amended to read:

63K-1-102. Definitions.

(1) (a) "Absent" means:

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

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

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

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

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

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

(5) "Division" means the Division of [~~Homeland Security~~] Emergency Management established in Title 53, Chapter 2, Part 1, Homeland Security Act.

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

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

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

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

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

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

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

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

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

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

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

(16) "Unavailable" means:

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

(b) as otherwise defined by local ordinance.

Section 18. Section 63K-1-301 is amended to read:

63K-1-301. Division to consult with legislative and judicial branch.

The Division of [~~Homeland Security~~] Emergency Management may consult with the Legislative Management Committee, the Judicial Council, and legislative and judicial staff offices to assist them in preparing emergency succession plans and procedures.

Section 19. Section 63K-3-201 is amended to read:

63K-3-201. Emergency Management Administration Council created -- Function -- Composition -- Expenses.

(1) There is created the Emergency Management Administration Council to provide advice and coordination for state and local government agencies on government emergency prevention, mitigation, preparedness, response, and recovery actions and activities.

(2) The council shall meet at the call of the chair, but at least quarterly.

(3) The council shall be made up of the:

(a) lieutenant governor, or the lieutenant governor's designee;

(b) attorney general, or the attorney general's designee;

(c) heads of the following state agencies, or their designees:

(i) Department of Public Safety;

(ii) Division of [~~Homeland Security~~] Emergency Management;

(iii) Department of Transportation;

(iv) Department of Health;

(v) Department of Environmental Quality;

(vi) Department of Community and Economic Development; and

(vii) Department of Natural Resources;

(d) adjutant general of the National Guard or the adjutant general's designee;

(e) commissioner of agriculture and food or the commissioner's designee;

(f) two representatives with expertise in emergency management appointed by the Utah League of Cities and Towns;

(g) two representatives with expertise in emergency management appointed by the Utah Association of Counties;

(h) up to four additional members with expertise in [~~homeland security~~] emergency management, critical infrastructure, or key resources as these terms are defined under 6 U.S. Code Section 101 appointed from the private sector, by the chair of the council; and

(i) two representatives appointed by the Utah Emergency Management Association.

(4) The commissioner of Public Safety and the lieutenant governor shall serve as co-chairs of the council.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The council shall coordinate with existing emergency management related entities including:

(a) the Homeland Security Regional Committees established by the Department of Public Safety;

(b) the Statewide Mutual Aid Committee established under Section 53-2-503; and

(c) the Hazardous Chemical Emergency Response Commission designated under Section 63K-3-301.

(7) The council may establish other committees and task forces as determined necessary by the council to carry out the duties of the council.

Section 20. Section 63K-4-402 is amended to read:

63K-4-402. Acquisition of property for public use -- Compensation of owners.

(1) (a) Upon proclamation of a state of emergency, the governor may purchase or lease public or private property for public use including:

(i) food and medical supplies;

(ii) clothing;

(iii) shelter;

(iv) means of transportation;

(v) fuels;

(vi) oils; or

(vii) buildings or lands.

(b) The governor may not purchase private home storage nor privately owned arms.

(2) (a) The governor may use property purchased under authority of this section for any purpose to meet the needs of an emergency, including its use to relieve want, distress, and disease.

(b) Any property used by the governor to meet the needs of an emergency is a public use.

(3) (a) The governor shall compensate the owner of property taken or used under authority of this section by complying with the procedures established in Title 78B, Chapter 6, Part 5, Eminent Domain.

(b) The governor shall pay for those purchases or leases from the funds available to the Division of [~~Homeland Security~~] Emergency Management under:

(i) this chapter; or

(ii) Title 53, Chapter 2, Part 4, Disaster Recovery Funding Act, to the extent provided for in that chapter.

(4) Nothing in this section applies to or authorizes compensation for the destruction or damage of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

Section 21. Section 63M-4-201 is amended to read:

63M-4-201. Governor's energy advisor -- Duties.

(1) (a) The governor shall appoint an energy advisor.

(b) The governor's energy advisor serves at the pleasure of the governor.

(2) The governor's energy advisor shall:

(a) advise the governor on energy-related matters;

(b) annually review and propose updates to the state's energy policy, as contained in Section 63M-4-301;

(c) promote as the governor's energy advisor considers necessary:

(i) the development of cost-effective energy resources both renewable and nonrenewable; and

(ii) educational programs, including programs supporting conservation and energy efficiency measures;

(d) coordinate across state agencies to assure consistency with state energy policy, including:

(i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;

(ii) working with the Division of [~~Homeland Security~~] Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 63K, Chapter 2, Energy Emergency Powers of the Governor Act;

(iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2-110; and

(iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;

(e) coordinate with the Division of [~~Homeland Security~~] Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2-110, 63K-2-201, 63K-2-205, and 63K-2-301;

(f) coordinate with requisite state agencies to study:

(i) the creation of a centralized state repository for energy-related information;

(ii) methods for streamlining state review and approval processes for energy-related projects; and

(iii) the development of multistate energy transmission and transportation infrastructure;

(g) coordinate energy-related regulatory processes within the state;

(h) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;

(i) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and

(j) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.

CHAPTER 56
H. B. 167
Passed March 3, 2011
Approved March 18, 2011
Effective May 10, 2011

INCARCERATION AMENDMENTS

Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the disposition of a person convicted of a class A misdemeanor.

Highlighted Provisions:

This bill:

- provides that if a person is serving a felony commitment at the Utah State Prison at the commencement of a class A misdemeanor conviction, the class A misdemeanor commitment shall be to the Utah State Prison.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-208, as last amended by Laws of Utah 1995, Chapter 249

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

Section 1. Section 76-3-208 is amended to read:

76-3-208. Imprisonment -- Custodial authorities.

(1) Persons sentenced to imprisonment shall be committed to the following custodial authorities:

(a) felony commitments shall be to the Utah State Prison;

(b) (i) class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant [~~consents to commitment to the Utah State Prison~~] is also serving a felony commitment at the Utah State Prison at the commencement of the class A misdemeanor conviction, in which case, the class A misdemeanor commitment shall be to the Utah State Prison for an indeterminate term not to exceed one year; and

(ii) [~~if the defendant consents to commitment to the Utah State Prison for an indeterminate term not to exceed one year, the court may impose the sentence. The~~] the court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section 77-18-4; and

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

(2) Custodial authorities may place a prisoner in a facility other than the one to which [~~he~~] the prisoner was committed when:

(a) it does not have space to accommodate [~~him~~] the prisoner; or

(b) the security of the institution or inmate requires it.

CHAPTER 57
H. B. 168
Passed March 9, 2011
Approved March 18, 2011
Effective May 10, 2011

CHILD IDENTITY THEFT PROTECTION AMENDMENTS

Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Karen Mayne
Cosponsors: Patrice M. Arent
Susan Duckworth
Janice M. Fisher
Gage Froerer
Brad J. Galvez
Stephen G. Handy
Lynn N. Hemingway
Neal B. Hendrickson
Paul Ray
Evan J. Vickers
Mark A. Wheatley
Larry B. Wiley
Brad R. Wilson

LONG TITLE

General Description:

This bill modifies the Utah Workforce Services Code relating to the suspected misuse of personal identifying information.

Highlighted Provisions:

This bill:

- provides definitions;
- includes in the definition of "suspected misuse of personal identifying information" reported wages exceeding $1,000 for a single reporting quarter for an individual under the age of 18, rather than the current age of younger than 16; and
- authorizes the Department of Workforce Services to notify the owner of personal identifying information or provide information to an appropriate law enforcement agency responsible for investigating an identity fraud violation if an individual younger than 18 years of age or the parent or guardian of the individual has enrolled the individual in the child identity protection plan or is in the process of enrolling the person.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-312.5, as enacted by Laws of Utah 2007, Chapter 264

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

Section 1. Section 35A-4-312.5 is amended to read:

35A-4-312.5. Suspected misuse of personal identifying information.

(1) As used in this section:

(a) "Child identity protection plan" is a program operated by the attorney general that uses IRIS and allows the attorney general to enter into an agreement with a third party to transmit verified personal information of a person younger than 18 years of age through secured means to enable the protection of the person's Social Security number from misuse.

(b) "IRIS" means the Identity Theft Reporting Information System operated by the attorney general.

[~~(a)~~] (c) "Personal identifying information" has the same meaning as defined in Section 76-6-1102.

[~~(b)~~] (d) "Suspected misuse of personal identifying information" includes:

(i) a Social Security number under which wages are being reported by two or more individuals; or

(ii) a Social Security number of an individual under the age of [~~16~~] 18 with reported wages exceeding $1,000 for a single reporting quarter.

(2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected misuse of personal identifying information by an individual other than the purported owner of the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has enrolled in the child identity protection plan, the department may:

(a) inform the purported owner of the information or, if the purported owner is a minor, the minor's parent or guardian, of the suspected misuse; and

(b) provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating an identity fraud violation.

CHAPTER 58
H. B. 179
Passed March 4, 2011
Approved March 18, 2011
Effective May 10, 2011

PEACE OFFICER RECERTIFICATION AMENDMENTS

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Peace Officer Standards and Training Act regarding certification of peace officers.

Highlighted Provisions:

This bill:

- clarifies required qualifications in order to be certified as a peace officer;
- modifies the requirements and procedures for the waiver of any portion of the requirements for certification as a peace officer;
- provides that a peace officer's certification becomes inactive after 18 months of not being active as a peace officer, which adds six months to the current period of one year;
- clarifies all requirements for reinstatement of a certification that has lapsed or become inactive; and
- amends related code sections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-1.5, as last amended by Laws of Utah 2009, Chapter 5
20A-9-201, as last amended by Laws of Utah 2010, Chapter 12
53-6-205, as renumbered and amended by Laws of Utah 1993, Chapter 234
53-6-208, as renumbered and amended by Laws of Utah 1993, Chapter 234
53-13-103, as last amended by Laws of Utah 2009, Chapter 344

REPEALS AND REENACTS:

53-6-206, as renumbered and amended by Laws of Utah 1993, Chapter 234

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

Section 1. Section 17-22-1.5 is amended to read:

17-22-1.5. County sheriff qualifications.

(1) Each person filing a declaration of candidacy for the office of county sheriff shall submit to the county clerk, at the time of filing a declaration of candidacy, a certificate issued by the Peace Officer Standards and Training Division created under Section 53-6-103 stating that the candidate has:

(a) (i) successfully met the standards and training requirements established for peace officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(ii) [~~passed a certification examination as provided~~] met the waiver requirements in Section 53-6-206; and

(b) met the qualifications to be certified as a law enforcement officer, as defined in Section 53-13-103.

(2) In addition to the general qualifications required of county officers by Title 17, Chapter 16, County Officers, each county sheriff shall:

(a) at the time of taking office:

(i) (A) have successfully met the standards and training requirements established for peace officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(B) have [~~passed a certification examination as provided~~] met the waiver requirements in Section 53-6-206; and

(ii) be qualified to be certified as:

(A) a law enforcement officer, as defined in Section 53-13-103; and

(B) if the person is elected to the office of county sheriff in any election held after the 2008 general election:

(I) a correctional officer, as defined in Section 53-13-104; or

(II) a correctional facility manager by having successfully completed a correctional facility management course that is offered by a certified academy in both an online web-based format and in a classroom format and that is approved by the Peace Officer Standards and Training Council created in Section 53-6-106;

(b) satisfactorily complete annual certified training as required in Section 53-13-103; and

(c) after certification as provided in Subsection (2)(a), remain certified during the sheriff's term of office as:

(i) a law enforcement officer; and

(ii) if the person is elected to the office of county sheriff in any election held after the 2008 general election:

(A) a correctional officer; or

(B) a correctional facility manager by having completed a correctional facility management course approved by the Peace Officer Standards and Training Council.

(3) If a sheriff resigns, retires, dies, or otherwise does not complete the term of office, the person appointed to serve for the remainder of the term shall within 60 days after the date of appointment complete the training and exam required under Subsection (2)(a)(ii)(B).

(4) The county legislative body shall declare the office of sheriff to be vacant if at any time the

incumbent sheriff fails to meet the qualifications for office under Subsection (2).

Section 2. Section 20A-9-201 is amended to read:

20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of more than one political party prohibited with exceptions -- General filing and form requirements -- Affidavit of impecuniosity.

(1) Before filing a declaration of candidacy for election to any office, a person shall:

(a) be a United States citizen; and

(b) meet the legal requirements of that office.

(2) (a) Except as provided in Subsection (2)(b), a person may not:

(i) file a declaration of candidacy for, or be a candidate for, more than one office in Utah during any election year; or

(ii) appear on the ballot as the candidate of more than one political party.

(b) A person may file a declaration of candidacy for, or be a candidate for, President or Vice President of the United States and another office, if the person resigns the person's candidacy for the other office after the person is officially nominated for President or Vice President of the United States.

(3) (a) (i) Except for presidential candidates, before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether or not the candidate meets those requirements.

(ii) Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the county in which [~~he~~] the person is seeking office; and

(D) a current resident of the county in which [~~he~~] the person is seeking office and either has been a resident of that county for at least one year or was appointed and is currently serving as county attorney and became a resident of the county within 30 days after appointment to the office.

(iii) Before accepting a declaration of candidacy for the office of district attorney, the county clerk shall ensure that, as of the date of the election, the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the prosecution district in which [~~he~~] the person is seeking office; and

(D) a current resident of the prosecution district in which [~~he~~] the person is seeking office and either will have been a resident of that prosecution district for at least one year as of the date of the election or was appointed and is currently serving as district attorney and became a resident of the prosecution district within 30 days after receiving appointment to the office.

(iv) Before accepting a declaration of candidacy for the office of county sheriff, the county clerk shall ensure that the person filing the declaration of candidacy:

(A) as of the date of filing:

(I) is a United States citizen;

(II) is a registered voter in the county in which the person seeks office;

(III) (Aa) has successfully met the standards and training requirements established for law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(Bb) has [~~passed a certification examination as provided~~] met the waiver requirements in Section 53-6-206; and

(IV) is qualified to be certified as a law enforcement officer, as defined in Section 53-13-103; and

(B) as of the date of the election, shall have been a resident of the county in which the person seeks office for at least one year.

(v) Before accepting a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state legislator, or State Board of Education member, the filing officer shall ensure:

(A) that the person filing the declaration of candidacy also files the financial disclosure required by Section 20A-11-1603; and

(B) if the filing officer is not the lieutenant governor, that the financial disclosure is provided to the lieutenant governor according to the procedures and requirements of Section 20A-11-1603.

(b) If the prospective candidate states that [~~he does not meet~~] the qualification requirements for the office are not met, the filing officer may not accept the prospective candidate's declaration of candidacy.

(c) If the candidate meets the requirements of Subsection (3)(a) and states that [~~he meets~~] the requirements of candidacy are met, the filing officer shall:

(i) inform the candidate that:

(A) the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(B) the candidate may be required to comply with state or local campaign finance disclosure laws; and

(C) the candidate is required to file a financial statement before the candidate's political convention under:

(I) Section 20A-11-204 for a candidate for constitutional office;

(II) Section 20A-11-303 for a candidate for the Legislature; or

(III) local campaign finance disclosure laws, if applicable;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer;

(v) accept the candidate's declaration of candidacy; and

(vi) if the candidate has filed for a partisan office, provide a certified copy of the declaration of candidacy to the chair of the county or state political party of which the candidate is a member.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) Except for presidential candidates, the form of the declaration of candidacy shall be substantially as follows:

"State of Utah, County of ____

I, _____, declare my intention of becoming a candidate for the office of ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of ____, Utah, Zip Code ____ Phone No. ____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

_____

Subscribed and sworn before me this _____(month\day\year).Notary Public (or other officer qualified to administer oath.)"

(5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy is:

(i) $25 for candidates for the local school district board; and

(ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person holding the office, but not less than $5, for all other federal, state, and county offices.

(b) Except for presidential candidates, the filing officer shall refund the filing fee to any candidate:

(i) who is disqualified; or

(ii) who the filing officer determines has filed improperly.

(c) (i) The county clerk shall immediately pay to the county treasurer all fees received from candidates.

(ii) The lieutenant governor shall:

(A) apportion to and pay to the county treasurers of the various counties all fees received for filing of nomination certificates or acceptances; and

(B) ensure that each county receives that proportion of the total amount paid to the lieutenant governor from the congressional district that the total vote of that county for all candidates for representative in Congress bears to the total vote of all counties within the congressional district for all candidates for representative in Congress.

(d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer, a financial statement filed at the time the affidavit is submitted.

(ii) A person who is able to pay the filing fee may not claim impecuniosity.

(iii) (A) False statements made on an affidavit of impecuniosity or a financial statement filed under this section shall be subject to the criminal penalties provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be considered an offense under this title for the purposes of assessing the penalties provided in Subsection 20A-1-609(2).

(iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in substantially the following form:

"Affidavit of Impecuniosity

Individual Name

_____

Address_____

Phone Number _____

I,_____(name), do solemnly [swear] [affirm], under penalty of law for false statements, that, owing to my poverty, I am unable to pay the filing fee required by law.

Date_____

Signature_____

Affiant Subscribed and sworn to before me on _____ (month\day\year)

_____

(signature)

Name and Title of Officer Authorized to Administer Oath _____"

(v) The filing officer shall provide to a person who requests an affidavit of impecuniosity a statement printed in substantially the following form, which may be included on the affidavit of impecuniosity:

"Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a candidate who is found guilty of filing a false statement, in addition to being subject to criminal penalties, will be removed from the ballot."

(vi) The filing officer may request that a person who makes a claim of impecuniosity under this Subsection (5)(d) file a financial statement on a form prepared by the election official.

(6) Any person who fails to file a declaration of candidacy or certificate of nomination within the time provided in this chapter is ineligible for nomination to office.

(7) A declaration of candidacy filed under this section may not be amended or modified after the final date established for filing a declaration of candidacy.

Section 3. Section 53-6-205 is amended to read:

53-6-205. Completion of training course required -- Persons affected.

[~~(1) (a) Except as provided in Subsection (2), a peace officer in this state must successfully complete the basic course at a certified academy, or successfully pass a state certification examination according to the requirements of Section 53-6-206, before that person can be certified.~~]

(1) (a) Except as provided in Subsection (2), before a person may be certified as a peace officer in Utah the person shall:

(i) successfully complete the basic training course at a certified academy;

(ii) pass the certification examination; and

(iii) pass a physical fitness test.

(b) A person may not exercise peace officer [~~powers~~] authority until certified.

(2) Subsection (1) applies only to persons not previously certified and who receive their first employment appointment or election as a peace officer in [~~this state~~] Utah on or after January 1, 1985.

Section 4. Section 53-6-206 is repealed and reenacted to read:

53-6-206. Waiver of training course requirement.

(1) The director may waive the required basic peace officer training course and certify an applicant who:

(a) provides proof that the applicant meets the requirements under Section 53-6-203 relating to qualifications for admission to the training course;

(b) provides proof that the applicant has completed a basic peace officer training program that, in the director's judgment, is equivalent to the course required for certification under this part;

(c) passes the certification examination; and

(d) passes a physical fitness test.

(2) A waiver applicant may not exercise peace officer authority until all waiver process requirements have been met and the applicant has been certified.

(3) If an applicant fails the examination under Subsection (1)(c), the director may not waive the required basic peace officer training course and the applicant shall comply with all of the requirements in Subsection 53-6-205(1) to be certified as a peace officer in Utah.

Section 5. Section 53-6-208 is amended to read:

53-6-208. Inactive certificates -- Lapse of certificate -- Reinstatement.

(1) (a) The certificate of a peace officer who has not been actively engaged in performing the duties of a peace officer for [~~one year shall be~~] 18 consecutive months or more is designated "inactive."

[~~(b) If a peace officer having an inactive certificate becomes reemployed or subsequently reengaged as a peace officer, his certificate may be reissued or reinstated by the director upon successful completion by that peace officer of the waiver process established by the director.~~]

[~~(c) The director may require a peace officer with an inactive certificate to successfully complete the basic training course before reissuing or reinstating certification.~~]

(b) A peace officer whose certificate is inactive shall pass the certification examination and a physical fitness test before the certificate may be reissued or reinstated.

(2) (a) The certificate of a peace officer [~~lapses if he~~] who has not been actively engaged in performing the duties of a peace officer for four continuous years[~~.~~] or more is designated as "lapsed."

[~~(b) Subject to Section 53-6-206, the peace officer shall successfully complete the basic training course before the certificate may be reissued or reinstated.~~]

(b) A peace officer whose certificate is lapsed shall pass the basic training course at a certified academy, the certification examination, and a physical fitness test before the certificate may be reissued or reinstated.

Section 6. Section 53-13-103 is amended to read:

53-13-103. Law enforcement officer.

(1) (a) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" specifically includes the following:

(i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections 23-20-1.5 and 79-4-501;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators employed by the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law;

(viii) school district police officers as designated by the board of education for the school district;

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(x) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993;

(xi) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety;

(xii) airport police officers of any airport owned or operated by the state or any of its political subdivisions; and

(xiii) transit police officers designated under Section 17B-2a-823.

(2) Law enforcement officers may serve criminal process and arrest violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise [~~his~~] authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections - State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority[~~, satisfactorily complete~~]:

[~~(a) the basic course at a certified law enforcement officer training academy or pass a certification examination as provided~~]

(a) (i) have satisfactorily completed the requirements of Section 53-6-205; or

(ii) have met the waiver requirements in Section 53-6-206[~~, and be certified~~]; and

(b) have satisfactorily completed annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

CHAPTER 59
H. B. 180
Passed March 2, 2011
Approved March 18, 2011
Effective May 10, 2011

DEBT COLLECTION DATA MATCH WITH WORKER REGISTRY

Chief Sponsor: David Clark
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions of the Utah Workforce Service Code and the Office of State Debt Collection.

Highlighted Provisions:

This bill:

- allows the Office of State Debt Collection to enter into written agreements with other government agencies to obtain information for the purpose of collecting state accounts receivable;
- provides that certain written agreements between the Office of State Debt Collection and the Unemployment Insurance Division may be used in court;
- allows the Unemployment Insurance Division to share information with the Office of State Debt Collection for the purpose of collecting state accounts receivables; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-312, as last amended by Laws of Utah 2009, Chapter 349
35A-7-107, as last amended by Laws of Utah 2008, Chapter 382
63A-8-201, as last amended by Laws of Utah 2009, Chapter 183

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

Section 1. Section 35A-4-312 is amended to read:

35A-4-312. Records.

(1) (a) An employing unit shall keep true and accurate work records containing any information the department may prescribe by rule.

(b) A record shall be open to inspection and subject to being copied by the division or its authorized representatives at a reasonable time and as often as may be necessary.

(c) An employing unit shall make a record available in the state for three years after the calendar year in which the services are rendered.

(2) The division may require from an employing unit a sworn or unsworn report with respect to a person employed by the employing unit that the division considers necessary for the effective administration of this chapter.

(3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in any manner revealing the employing unit's or individual's identity.

(4) (a) The information obtained by the division under this section may not be used in court or admitted into evidence in an action or proceeding, except:

(i) in an action or proceeding arising out of this chapter;

(ii) if the Labor Commission enters into a written agreement with the division under Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:

(A) Title 34, Chapter 23, Employment of Minors;

(B) Title 34, Chapter 28, Payment of Wages;

(C) Title 34, Chapter 40, Utah Minimum Wage Act; or

(D) Title 34A, Utah Labor Code; [~~or~~]

(iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207[~~.~~]; or

(iv) under the terms of a written agreement between the Office of State Debt Collection and the division as provided in Subsection (5).

(b) The information obtained by the division under this section shall be disclosed to:

(i) a party to an unemployment insurance hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or

(ii) an employer, upon request in writing for any information concerning a claim for a benefit with respect to a former employee of the employer.

(5) The information obtained by the division under this section may be disclosed to:

(a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;

(b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the Labor Commission;

(c) an employee of the Department of Commerce for the purpose of carrying out the programs administered by the Department of Commerce;

(d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:

(i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:

(A) a workers' compensation program; or

(B) public assistance funds; or

(ii) the recovery of overpayments of workers' compensation or public assistance funds;

(g) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;

(h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:

(i) audit verification or simplification;

(ii) state or federal tax compliance;

(iii) verification of a code or classification of the:

(A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(iv) statistics;

(i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Investment Act of 1998 for the purpose of:

(i) coordinating services with the department;

(ii) evaluating the effectiveness of those activities; and

(iii) measuring performance;

(j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;

(k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;

(l) an individual whose wage data is submitted to the department by an employer, so long as no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual; [~~or~~]

(m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act[~~.~~]; or

(n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-8-201.

(6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a) and (g), shall be made only if:

(a) the division determines that the disclosure will not have a negative effect on:

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

(7) (a) The employees of a division of the department other than the Workforce Development and Information Division and the Unemployment Insurance Division or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division.

(b) Use of private information obtained from the department by a person[~~,~~] or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

Section 2. Section 35A-7-107 is amended to read:

35A-7-107. Use and access to the registry records.

(1) (a) The records of the registry shall be maintained as private records under Section 63G-2-202.

(b) In addition to those persons granted access to private records under Sections 63G-2-202 and 63G-2-206, state or federal agencies may access data from the registry for the following purposes:

(i) the Office of Recovery Services for use related to locating, establishing, and enforcing child, medical, and spousal support obligations and other services;

(ii) state agencies which use financial information in determining eligibility for public assistance programs; [~~and~~]

(iii) state agencies which use financial information in collecting state accounts receivable; and

[~~(iii)~~] (iv) federal agencies responsible for periodic matches of new hire registry information with federal data bases.

(2) Information that is received under this chapter shall be kept by the department for at least six months.

Section 3. Section 63A-8-201 is amended to read:

63A-8-201. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Department of Administrative Services.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to [~~all~~] each state [~~agencies~~] agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by [~~all~~] each state [~~agencies~~] agency;

(g) prepare quarterly and annual reports of the state's receivables;

(h) create or coordinate a state accounts receivable database;

(i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;

(j) identify [~~those~~] any state [~~agencies~~] agency that [~~are~~] is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between each state [~~agencies~~] agency to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between each state [~~agencies~~] agency;

(m) establish procedures for writing off accounts receivable for accounting and collection purposes;

(n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;

(o) be a real party in interest for an account receivable referred to the office by any state agency; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-8-302, and 78A-5-110.

(4) The office may:

(a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;

(b) collect accounts receivables for higher education entities, if the higher education entity agrees;

(c) prepare a request for proposal for consulting services to:

(i) analyze the state's receivable management and collection efforts; and

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private or state agencies to collect past-due accounts;

(e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;

(f) obtain access to records of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206;

(g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:

(i) a fee to cover the administrative costs of collection, on accounts administered by the office;

(ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;

(iii) an interest charge that is:

(A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or

(B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

(iv) fees to collect accounts receivable for higher education;

(h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;

(i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;

(j) file a satisfaction of judgment in the district court by following the procedures and requirements of the Utah Rules of Civil Procedure;

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary; [~~and~~]

(l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record[~~.~~]; and

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require a state [~~agencies~~] agency to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in [~~their~~] the management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

(9) The summary shall include:

(a) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(c) any costs incurred in the collection process.

(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

CHAPTER 60
H. B. 192
Passed February 25, 2011
Approved March 18, 2011
Effective May 10, 2011

CONTROLLED SUBSTANCES ADVISORY COMMITTEE AMENDMENTS

Chief Sponsor: Paul Ray
Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill modifies Title 58, Occupations and Professions, regarding the Controlled Substances Advisory Committee Act.

Highlighted Provisions:

This bill:

- adds two members to the Controlled Substances Advisory Committee:
  - one advanced practice registered nurse; and
  - one representative of the public; and
- amends the quorum requirements to reflect the membership changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-38a-201, as enacted by Laws of Utah 2010, Chapter 231
58-38a-202, as enacted by Laws of Utah 2010, Chapter 231

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

Section 1. Section 58-38a-201 is amended to read:

58-38a-201. Controlled Substances Advisory Committee.

There is created within the Division of Occupational and Professional Licensing the Controlled Substances Advisory Committee. The committee consists of:

(1) the director of the Department of Health or the director's designee;

(2) the State Medical Examiner or the examiner's designee;

(3) the commissioner of the Department of Public Safety or the commissioner's designee;

(4) one physician who is a member of the Physicians Licensing Board and is designated by that board;

(5) one pharmacist who is a member of the Utah State Board of Pharmacy and is designated by that board;

(6) one dentist who is a member of the Dentist and Dental Hygienist Licensing Board and is designated by that board;

(7) one physician who is currently licensed and practicing in the state, to be appointed by the governor;

(8) one psychiatrist who is currently licensed and practicing in the state, to be appointed by the governor;

(9) one individual with expertise in substance abuse addiction, to be appointed by the governor;

(10) one representative from the Statewide Association of Prosecutors, to be designated by that association; [~~and~~]

(11) one naturopathic physician who is currently licensed and practicing in the state, to be appointed by the governor[~~.~~];

(12) one advanced practice registered nurse who is currently licensed and practicing in this state, to be appointed by the governor; and

(13) one member of the public, to be appointed by the governor.

Section 2. Section 58-38a-202 is amended to read:

58-38a-202. Terms of committee service.

(1) (a) Members of the advisory committee shall serve terms of four years, except that the members under Subsections 58-38a-201(1), (2), and (3) shall serve during their terms as appointed officials.

(b) Vacancies in the committee occurring otherwise than by the expiration of a term shall be filled for the unexpired term in the same manner as original appointments.

(2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(3) (a) The director of the Department of Health, or the director's designee, is the chair of the committee.

(b) The advisory committee meets at the call of the chair or at the call of a majority of the committee members.

(c) The advisory committee meets annually and more often as required to carry out its duties under this chapter.

(d) [~~Six~~] Seven members of the advisory committee constitute a quorum.

(e) Action by the committee requires a majority vote of a quorum.

CHAPTER 61
H. B. 238
Passed February 22, 2011
Approved March 18, 2011
Effective March 18, 2011

RADIOLOGY TECHNOLOGIST AND RADIOLOGY PRACTICAL TECHNICIAN LICENSING ACT

Chief Sponsor: Don L. Ipson
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends the Occupations and Professions Code related to Radiology Technologist and Radiology Practical Technician Licensing Act.

Highlighted Provisions:

This bill:

- renumbers the code sections in the chapter to conform to other licensing acts in Title 58, Occupations and Professions;
- defines indirect supervision;
- defines the practice of radiologist assistant;
- amends the membership of the Radiologic Technologist Licensing Board;
- establishes a requirement for a license for a radiologist assistant;
- permits a temporary license as a radiology assistant for an individual currently practicing and nationally certified;
- defines the scope of practice for a radiologist assistant;
- establishes continuing education requirements for a radiologist assistant; and
- moves language regarding unlawful and unprofessional conduct from the definition section of the chapter to a new section within the chapter.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

ENACTS:
58-54-304, Utah Code Annotated 1953
58-54-501, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
58-54-101, (Renumbered from 58-54-1, as last amended by Laws of Utah 1994, Chapter 163)
58-54-102, (Renumbered from 58-54-2, as last amended by Laws of Utah 2008, Chapter 382)
58-54-201, (Renumbered from 58-54-3, as last amended by Laws of Utah 2010, Chapters 218, 286, and 324)
58-54-301, (Renumbered from 58-54-4, as last amended by Laws of Utah 1993, Chapter 297)
58-54-302, (Renumbered from 58-54-5, as last amended by Laws of Utah 2009, Chapter 183)
58-54-303, (Renumbered from 58-54-8, as last amended by Laws of Utah 1991, Chapter 199)
58-54-305, (Renumbered from 58-54-6, as repealed and reenacted by Laws of Utah 1993, Chapter 297)
58-54-306, (Renumbered from 58-54-4.3, as last amended by Laws of Utah 2000, Chapter 19)
58-54-401, (Renumbered from 58-54-7, as repealed and reenacted by Laws of Utah 1993, Chapter 297)

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

Section 1. Section 58-54-101, which is renumbered from Section 58-54-1 is renumbered and amended to read:

CHAPTER 54. RADIOLOGIC TECHNOLOGIST, RADIOLOGIST ASSISTANT, AND RADIOLOGY PRACTICAL TECHNICIAN LICENSING ACT

Part 1. General Provisions

[~~58-54-1~~]. 58-54-101. Title.

This chapter is known as the[~~"Radiology~~] "Radiologic Technologist [~~and~~], Radiologist Assistant, and Radiology Practical Technician Licensing Act."

Section 2. Section 58-54-102, which is renumbered from Section 58-54-2 is renumbered and amended to read:

[~~58-54-2~~]. 58-54-102. Definitions.

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

(1) "Board" means the [~~Radiology~~] Radiologic Technologist Licensing Board established under this chapter.

(2) "General supervision" means the supervising radiologist is available to provide immediate communication with the supervised person and is aware of the procedure before it is performed.

(3) "Indirect supervision" means the supervising radiologist:

(a) has given either written or verbal instructions to the person being supervised;

(b) is present in the facility in which the person being supervised is providing services; and

(c) is available to provide immediate face-to-face communications with the person being supervised.

[~~(2)~~] (4) "Practice of radiologic technology" means using radiation from a radioactive substance, radiology equipment, or any other source, in amounts beyond normal background levels, for diagnostic or therapeutic purposes on humans.

(5) "Practice of radiologist assistant" means the performance of non-invasive and minimally invasive radiological procedures:

(a) delegated to a radiologist assistant by a radiologist; and

(b) performed under the indirect supervision of a radiologist.

[~~(7) "Radiology~~] (6) "Radiologic technologist" means a person licensed under this chapter to engage in the practice of [~~radiology~~] radiologic technology under the general supervision of a radiologist or radiology practitioner including the administration of parenteral contrast media, [~~radionucleides~~] radionuclides, and other medications incidental to radiology procedures provided the administrations are under the direct supervision of a qualified physician and the technologist is currently certified in cardiopulmonary resuscitation (CPR) and appropriate patient care procedures.

[~~(3)~~] (7) "Radiologist" means a physician certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

(8) "Radiologist assistant" means a person licensed under this chapter to engage in the practice of a radiologist assistant.

[~~(4)~~] (9) "Radiology equipment" means any medical radiation device that emits ionizing or nonionizing radiation or detects that radiation for the purpose or intended purpose of:

(a) diagnosing disease or other medical conditions in humans; or

(b) treating, curing, mitigating, or preventing disease in humans.

[~~(5)~~] (10) "Radiology practical technician" means a person licensed under this chapter to engage in a practice of radiologic technology performing limited diagnostic radiology procedures:

(a) as defined and permitted by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) under the supervision of a radiologist or radiology practitioner.

[~~(6)~~] (11) "Radiology practitioner" means any person or individual licensed in this state as a physician and surgeon, osteopathic physician, podiatric physician, chiropractic physician, dentist, dental hygienist, or a physician's assistant, nurse practitioner, or nurse specialist practicing under the supervision of an approved supervising physician and in accordance with an approved protocol and utilization plan.

[~~(8)~~] (12) "Unlawful conduct" is as defined in [~~Section~~] Sections 58-1-501 [~~includes:~~] and 58-54-501.

[~~(a) using any of the following titles if not licensed as a radiology technologist under this chapter:~~]

[~~(i) radiology practical technician;~~]

[~~(ii) radiology technologist;~~]

[~~(iii) medical radiographer;~~]

[~~(iv) radiation therapist; or~~]

[~~(v) nuclear medicine technologist; and~~]

[~~(b) using the title "radiology practical technician" if not licensed as a radiology practical technician under this chapter.~~]

[~~(9)~~] (13) "Unprofessional conduct" is as defined in [~~Section~~] Sections 58-1-501 and 58-54-501 and as may be further defined by administrative rule [~~includes:~~] adopted by the division.

[~~(a) any act or omission by a person licensed under this chapter that is contrary to the instructions of the radiologist or radiology practitioner responsible for supervising the licensee and which does or reasonably could pose a threat to the health, safety, or welfare of a patient or any other person;~~]

[~~(b) operating any radiology equipment that is known to be unsafe or not in compliance with all applicable state requirements regulating radiology equipment;~~]

[~~(c) permitting any person to operate any radiology equipment who is not permitted to do so under provisions of law or who is incompetent to operate radiology equipment for any reason;~~]

[~~(d) revealing to any unauthorized person any information considered confidential or privileged regarding any patient;~~]

[~~(e) the use of any controlled substance as defined by the statutes of this state except to the extent the controlled substance is lawfully prescribed to the licensee and used in accordance with the instructions of the prescribing practitioner; and~~]

[~~(f) willfully and intentionally or negligently making any false statement or entry on any patient record or upon any record used to facilitate payment for radiology services.~~]

Section 3. Section 58-54-201, which is renumbered from Section 58-54-3 is renumbered and amended to read:

Part 2. Board

[~~58-54-3~~]. 58-54-201. Board created -- Membership -- Duties.

(1) There is created a [~~Radiology~~] Radiologic Technologist Licensing Board consisting of [~~seven~~] nine members as follows:

(a) [~~four~~] three licensed [~~radiology~~] radiologic technologists;

(b) one licensed radiology practical technician;

(c) one licensed radiologist assistant;

[~~(c)~~] (d) [~~one radiologist~~] two radiologists; [~~and~~]

(e) one physician licensed under this title who is not a radiologist, and who uses radiologic services in the physician's practice; and

[~~(d)~~] (f) one member from the general public.

(2) The board shall be appointed in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

(4) In accordance with Subsection 58-1-203(1)(f), there is established an advisory peer committee to the board consisting of eight members broadly representative of the state and including:

(a) one licensed physician and surgeon who is not a radiologist and who uses radiology equipment in a rural office-based practice, appointed from among recommendations of the Physicians Licensing Board;

(b) one licensed physician and surgeon who is not a radiologist and who uses radiology equipment in an urban office-based practice, appointed from among recommendations of the Physicians Licensing Board;

(c) one licensed physician and surgeon who is a radiologist practicing in radiology, appointed from among recommendations of the Physicians Licensing Board;

(d) one licensed osteopathic physician, appointed from among recommendations of the Osteopathic Physicians Licensing Board;

(e) one licensed chiropractic physician, appointed from among recommendations of the Chiropractors Licensing Board;

(f) one licensed podiatric physician, appointed from among recommendations of the Podiatric Physician Board;

(g) one representative of the state agency with primary responsibility for regulation of sources of radiation, recommended by that agency; and

(h) one representative of a general acute hospital, as defined in Section 26-21-2, that is located in a rural area of the state.

(5) (a) Except as required by Subsection (5)(b), members of the advisory peer committee shall be appointed to four-year terms by the director in collaboration with the board from among the recommendations.

(b) Notwithstanding the requirements of Subsection (5)(a), the director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The duties, responsibilities, and scope of authority of the advisory peer committee are:

(a) to advise the board with respect to the board's fulfillment of its duties, functions, and responsibilities under Sections 58-1-202 and 58-1-203; and

(b) to advise the division with respect to the examination the division is to adopt by rule, by which a radiology practical technician may qualify for licensure under Section [~~58-54-5~~] 58-54-302.

Section 4. Section 58-54-301, which is renumbered from Section 58-54-4 is renumbered and amended to read:

Part 3. Licensing

[~~58-54-4~~]. 58-54-301. License required.

(1) An individual may not engage in the practice of radiologic technology or the practice of a radiologist assistant unless licensed or exempted from licensure under this chapter.

(2) The division shall issue to persons qualified under this chapter a license in the classification of [~~radiology~~] radiologic technologist, radiologist assistant, or radiology practical technician.

(3) (a) A license shall be issued without regard to any area of practice specialty as a [~~radiology~~] radiologic technologist.

(b) A license for a radiology practical technician may be issued certifying the practical technician for a specialty type or limited practice.

Section 5. Section 58-54-302, which is renumbered from Section 58-54-5 is renumbered and amended to read:

[~~58-54-5~~]. 58-54-302. Requirements for licensure.

(1) Each applicant for licensure as a [~~radiology~~] radiologic technologist, radiology assistant, or radiology practical technician shall:

(a) submit an application in a form prescribed by the division in collaboration with the board;

(b) pay a fee as determined by the department pursuant to Section 63J-1-504; and

(c) be of good moral character.

(2) Each applicant for licensure as a [~~radiology~~] radiologic technologist shall, in addition to the requirements of Subsection (1):

(a) be a graduate of an accredited educational program in [~~radiology~~] radiologic technology or certified by the American Registry of Radiologic Technologists or any equivalent educational program approved by the division in collaboration with the board; and

(b) have passed an examination approved by the division in collaboration with the board.

(3) Each applicant for licensure as a radiology practical technician shall, in addition to the requirements of Subsection (1), have passed a basic examination and one or more specialty examinations that are competency based, using a

task analysis of the scope of practice of radiology practical technicians in the state. The basic examination and the specialty examination shall be approved by the division in collaboration with the board and the licensing board of the profession within which the radiology practical technician will be practicing.

(4) The division shall provide for administration of the radiology practical technician examination not less than monthly at offices designated by the division and located:

(a) in Salt Lake City; and

(b) within each local health department jurisdictional area.

(5) (a) Except as provided in Subsection (5)(b), each applicant for licensure as a radiologist assistant shall:

(i) meet the requirements of Subsections (1) and (2);

(ii) have a Bachelor of Science degree; and

(iii) be certified as:

(A) a radiologist assistant by the American Registry of Radiologic Technologists; or

(B) a radiology practitioner assistant by the Certification Board of Radiology Practitioner Assistants.

(b) An individual who meets the requirements of Subsections (5)(a)(i) and (iii), but not Subsection (5)(a)(ii), may be licensed as a radiology assistant under this chapter until May 31, 2013, at which time, the individual must have completed the Bachelor of Science degree in order to retain the license of radiology assistant.

Section 6. Section 58-54-303, which is renumbered from Section 58-54-8 is renumbered and amended to read:

[~~58-54-8~~]. 58-54-303. Supervision and prescription required.

The practice of radiologic technology by a [~~radiology~~] radiologic technologist licensed under this chapter shall be under the general supervision of a radiologist or radiology practitioner and may be performed only upon the order of a radiologist or radiology practitioner acting within the scope of [~~his~~] the radiologist's or radiology practitioner's license and experience within the scope of practice of a radiology practitioner.

Section 7. Section 58-54-304 is enacted to read:

58-54-304. Scope of practice for radiologist assistant.

(1) The scope of practice for a radiologist assistant includes:

(a) determination of whether a patient has been appropriately prepared for the radiologic procedure;

(b) assessment and evaluation of the physiologic responsiveness of a patient undergoing a radiologic procedure;

(c) assessment and evaluation of possible contraindications to a procedure;

(d) obtaining informed consent from the patient as specified by a Delegation of Services Agreement between the radiologic assistant and the supervising radiologist in accordance with Subsection (2);

(e) evaluation of image quality and communication of initial image observations only to the supervising radiologist;

(f) administration of contrast media or other medications prescribed by the supervising radiologist; and

(g) performance of radiologic procedures under the indirect supervision of a radiologist.

(2) The radiologist assistant and supervising radiologist shall enter into a Delegation of Services Agreement identifying radiologic procedures to be performed by the radiologist assistant and establishing a regular review process by the supervising radiologist for all work performed by and records kept by the radiologist assistant. The Delegation of Services Agreement shall:

(a) be kept at the place of practice at which the radiologist assistant is performing delegated services; and

(b) be consistent with radiologist assistant practice guidelines developed by the American College of Radiology, as supplemented by recognized radiology organizations such as the American Society of Radiologic Technologists and the American Registry of Radiologic Technologists.

(3) The radiologist assistant shall not interpret images, provide diagnosis, or prescribe medications or therapies.

Section 8. Section 58-54-305, which is renumbered from Section 58-54-6 is renumbered and amended to read:

[~~58-54-6~~]. 58-54-305. Term of license -- Expiration -- Renewal.

(1) [~~Each~~] Except as provided by Subsection (4), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal, licensees shall show satisfactory evidence of each of the following renewal requirements:

(a) [~~16~~] 24 hours of approved professional education during a two-year period, as defined by administrative rule, before renewal of a [~~radiology~~] radiologic technologist license[~~.~~];

(b) 10 hours of approved professional education during a two-year period, as defined by

administrative rule, before renewal of a radiology practical technician license[.]; and

(c) 50 hours of approved professional education during a two-year period, as defined by administrative rule, before renewal of a radiologist assistant license.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 9. Section 58-54-306, which is renumbered from Section 58-54-4.3 is renumbered and amended to read:

[~~58-54-4.3~~]. 58-54-306. Exemption from licensure.

A person may engage in the practice of [~~radiology~~] radiologic technology without being licensed under this chapter if:

(1) (a) the person is filling a new or existing position as an employee performing the duties of a radiology practical technician when a licensed radiology practical technician is not available to begin in the new position or continue filling the existing position;

(b) the total period in which the position is filled by the unlicensed person is not more than 90 days;

(c) the unlicensed person at all times performs services as a radiology practical technician under the direct on-premises supervision of a radiology practitioner; and

(d) the employee position filled by an unlicensed person under this section is an existing position and was filled by a person licensed under this chapter immediately prior to employment of the unlicensed person;

(2) the person:

(a) performs services in a dental facility under the supervision of a dentist licensed to practice in this state; and

(b) has completed a radiology course approved by the Dentists and Dental Hygienists Board created under Section 58-69-201; or

(3) the person:

(a) performs services in a medical facility under the supervision of a podiatric physician licensed to practice in this state; and

(b) has completed a radiology course approved by the Podiatric Physician Board created under Section 58-5a-201.

Section 10. Section 58-54-401, which is renumbered from Section 58-54-7 is renumbered and amended to read:

Part 4. License Denial and Discipline

[~~58-54-7~~]. 58-54-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Section 11. Section 58-54-501 is enacted to read:

Part 5. Unlawful and Unprofessional Conduct - Penalties

58-54-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" includes:

(a) using any of the following titles if not licensed as a radiology technologist under this chapter:

(i) radiology practical technician;

(ii) radiologic technologist;

(iii) medical radiographer;

(iv) radiation therapist; or

(v) nuclear medicine technologist;

(b) using the title "radiology practical technician" if not licensed as a radiology practical technician under this chapter; and

(c) using the title "radiologist assistant" if not licensed as a radiologist assistant under this chapter.

(2) "Unprofessional conduct" includes:

(a) any act or omission by a person licensed under this chapter that is contrary to the instructions of the radiologist or radiology practitioner responsible for supervising the licensee and which does or reasonably could pose a threat to the health, safety, or welfare of a patient or any other person;

(b) operating any radiology equipment that is known to be unsafe or not in compliance with all applicable state requirements regulating radiology equipment;

(c) permitting any person to operate any radiology equipment who is not permitted to do so under provisions of law or who is incompetent to operate radiology equipment for any reason;

(d) revealing to any unauthorized person any information considered confidential or privileged regarding any patient;

(e) the use of any controlled substance as defined by the statutes of this state except to the extent the controlled substance is lawfully prescribed to the licensee and used in accordance with the instructions of the prescribing practitioner; and

(f) willfully and intentionally or negligently making any false statement or entry on any patient record or upon any record used to facilitate payment for radiology services.

Section 12. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution

Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 62
H. B. 333
Passed March 7, 2011
Approved March 18, 2011
Effective March 18, 2011

UNFAIR INDUCEMENTS RELATED TO INSURANCE PRODUCTS

Chief Sponsor: James A. Dunnigan
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code to address what constitutes unfair inducements related to insurance.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits inducements by a licensee or an officer or employee of a licensee;
- lists activities that constitute or do not constitute a prohibited inducement; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

31A-3-303, as last amended by Laws of Utah 2003, Chapters 252 and 298
31A-15-103, as last amended by Laws of Utah 2008, Chapter 257
31A-21-404, as last amended by Laws of Utah 2004, Chapter 90
31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382
31A-23a-504, as last amended by Laws of Utah 2009, Chapter 349

ENACTS:

31A-23a-402.5, Utah Code Annotated 1953

REPEALS:

31A-23a-404, as renumbered and amended by Laws of Utah 2003, Chapter 298

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

Section 1. Section 31A-3-303 is amended to read:

31A-3-303. Payment of tax.

(1) The insurer, all producers involved in the transaction, and the policyholder are jointly and severally liable for the payment of the taxes required under Section 31A-3-301. The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends when the policyholder pays the tax to the producer or insurer. The insurer and all producers involved in the transaction are jointly and severally liable for the payment of the additional tax required under Section 31A-3-302. Except for the tax under Section 31A-3-302, the taxes under this part shall be paid by the policyholder who shall be billed specifically for the tax when billed for the premium. Except for the tax imposed under Section 31A-3-302, absorption of the tax by the producer or insurer is an unfair method of competition under [~~Section~~] Sections 31A-23a-402 and 31A-23a-402.5.

(2) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, producers, and policyholders to use in determining the amount of taxes owed under this part, and the manner and time of payment. If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.

(3) Upon making a record of its actions, and upon reasonable cause shown, the State Tax Commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

(4) If a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, all premiums with respect to surplus lines insurance received in this state by a surplus lines producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

(5) All premium taxes collected under this part by a producer or by an insurer are the property of this state.

(6) If the property of any producer is seized under any process in a court in this state, or if his business is suspended by the action of creditors or put into the hands of an assignee, receiver, or trustee, all taxes and penalties due this state under this part are preferred claims and the state is to that extent a preferred creditor.

Section 2. Section 31A-15-103 is amended to read:

31A-15-103. Surplus lines insurance -- Unauthorized insurers.

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make an insurance contract with a person in this state and on a risk located in this state, subject to the limitations and requirements of this section.

(2) (a) For a contract made under this section, the insurer may, in this state:

(i) inspect the risks to be insured;

(ii) collect premiums;

(iii) adjust losses; and

(iv) do another act reasonably incidental to the contract.

(b) An act described in Subsection (2)(a) may be done through:

(i) an employee; or

(ii) an independent contractor.

(3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on behalf of an insurer that has no certificate of authority.

(b) Insurance placed with a nonadmitted insurer shall be placed with a surplus lines producer licensed under Chapter 23a, Insurance Marketing – Licensing Producers, Consultants, and Reinsurance Intermediaries.

(c) The commissioner may by rule prescribe how a surplus lines producer may:

(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines producer under authority of the surplus lines producer's license to one holding a license to act as an insurance producer; and

(ii) advertise the availability of the surplus lines producer's services in procuring, on behalf of a person seeking insurance, a contract with a nonadmitted insurer.

(4) For a contract made under this section, a nonadmitted insurer is subject to Sections 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to an employer located in this state, except for stop loss coverage issued to an employer securing workers' compensation under Subsection 34A-2-201(3).

(6) (a) The commissioner may by rule prohibit making a contract under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.

(b) The commissioner may by rule place a restriction or a limitation on and create special procedures for making a contract under Subsection (1) for a specified class of insurance if:

(i) there have been abuses of placements in the class; or

(ii) the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making a contract under Subsection (1) and all insurance producers from dealing with the insurer if:

(i) the insurer willfully violates:

(A) this section;

(B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or

(C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);

(ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is:

(A) in an unsound condition;

(B) operated in a fraudulent, dishonest, or incompetent manner; or

(C) in violation of the law of its domicile.

(d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers whose:

(A) solidity the commissioner doubts; or

(B) practices the commissioner considers objectionable.

(ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the commissioner considers to be reliable and solid.

(iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner may issue other relevant evaluations of unauthorized insurers.

(iv) An action may not lie against the commissioner or an employee of the department for a written or oral communication made in, or in connection with the issuance of, a list or evaluation described in this Subsection (6)(d).

(e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

(i) delivers a request to the commissioner to be on the list;

(ii) establishes satisfactory evidence of good reputation and financial integrity;

(iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current annual statement certified by the insurer; and

(B) continues each subsequent year to file its annual statements with the commissioner within 60 days of the day on which it is filed with the insurance regulatory authority where the insurer is domiciled;

(iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintains capital and surplus of at least $15,000,000, whichever is greater; and

(II) maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

(Aa) shall be in an amount not less than $2,500,000 for the protection of all of the insurer's policyholders in the United States;

(Bb) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(Cc) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; or

(B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:

(I) shall be in an amount not less than $50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; and

(v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.

(7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with:

(i) a financially unsound insurer;

(ii) an insurer engaging in unfair practices; or

(iii) an otherwise substandard insurer.

(b) A surplus line producer may place insurance under this section with an insurer described in Subsection (7)(a) if the surplus line producer:

(i) gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on the surplus line producer's investigation; and

(ii) explains the need to place the business with that insurer.

(c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the surplus line producer for at least five years.

(d) To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to an authorized insurer.

(e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed substandard.

(8) (a) A policy issued under this section shall:

(i) include a description of the subject of the insurance; and

(ii) indicate:

(A) the coverage, conditions, and term of the insurance;

(B) the premium charged the policyholder;

(C) the premium taxes to be collected from the policyholder; and

(D) the name and address of the policyholder and insurer.

(b) If the direct risk is assumed by more than one insurer, the policy shall state:

(i) the names and addresses of all insurers; and

(ii) the portion of the entire direct risk each assumes.

(c) A policy issued under this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28."

(9) Upon placing a new or renewal coverage under this section, a surplus lines producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the insurance consisting either of:

(a) the policy as issued by the insurer; or

(b) if the policy is not available upon placing the coverage, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject a policy issued under this section to as much of the regulation provided by this title as is required for a comparable policy written by an authorized foreign insurer.

(11) (a) A surplus lines transaction in this state shall be examined to determine whether it complies with:

(i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

(ii) the solicitation limitations of Subsection (3);

(iii) the requirement of Subsection (3) that placement be through a surplus lines producer;

(iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

(v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines producer shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) (i) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize an additional advisory

organization to conduct an examination under this Subsection (11)(c).

(ii) The commissioner's authorization of one or more advisory organizations to act as examiners under this Subsection (11)(c) shall be:

(A) by rule; and

(B) evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with the transaction.

(B) A stamping fee collected by the commissioner shall be deposited in the General Fund.

(C) The commissioner shall establish a stamping fee by rule.

(ii) A stamping fee collected by an advisory organization is the property of the advisory organization to be used in paying the expenses of the advisory organization.

(iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301.

(iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If a stamping fee is not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until full payment of the stamping fee.

(v) A stamping fee relative to a policy covering a risk located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section 31A-15-111.

(f) An examination conducted under this Subsection (11) and a document or materials related to the examination are confidential.

Section 3. Section 31A-21-404 is amended to read:

31A-21-404. Out-of-state insurers.

Any insurer extending mass marketed life or accident and health insurance under a group or blanket policy issued outside of this state to residents of this state shall, with respect to the mass marketed life or accident and health insurance policy:

(1) comply with:

(a) Sections 31A-23a-402, 31A-23a-402.5, and 31A-23a-403; and

(b) Chapter 26, Part 3, Claim Practices; and

(2) upon the commissioner's request, deliver to the commissioner a copy of any mass marketed life or accident and health insurance policy, certificates issued under these policies, and advertising material used in this state in connection with the policy.

Section 4. Section 31A-23a-402 is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

[~~(2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be issued or continued, including premium or commission rebates.~~]

[~~(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.~~]

[~~(iii) This Subsection (2)(a) does not preclude:~~]

[~~(A) an insurer from reducing premiums because of expense savings;~~]

[~~(B) an insurer from providing to a policyholder or insured one or more incentives to participate in programs or activities designed to reduce claims or claim expenses;~~]

[~~(C) the usual kinds of social courtesies not related to particular transactions; or~~]

[~~(D) an insurer from receiving premiums under an installment payment plan.~~]

[~~(iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define what constitutes an incentive described in Subsection (2)(a)(iii)(B).~~]

[~~(b) A licensee under this title may not absorb the tax under Section 31A-3-301.~~]

[~~(c) (i)~~] (2) (a) A title insurer or producer or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

[~~(A)~~] (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

[~~(B)~~] (ii) any special favor or advantage not generally available to others; or

[~~(C)~~] (iii) any money or other consideration, except if approved under Section 31A-2-405; or

[~~(D)~~] (iv) material inducement.

[~~(ii)~~] (b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

[~~(iii)~~] (c) An insured or any other person connected, directly or indirectly, with the transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)[~~(c)(i)~~](a).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

(i) a person who is or should be licensed under this title;

(ii) an employee of that licensee or person who should be licensed;

(iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in [~~any other~~] an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that [~~they~~] the method of competition, the act, or the practice:

(i) [~~are~~] is misleading;

(ii) [~~are~~] is deceptive;

(iii) [~~are~~] is unfairly discriminatory;

(iv) [~~provide~~] provides an unfair inducement; or

(v) unreasonably [~~restrain~~] restrains competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define [~~any other~~] an unfair method of competition or [~~any other~~] unfair or deceptive act or practice after a finding that [~~they~~] the method of competition, the act, or the practice:

(i) [~~are~~] is misleading;

(ii) [~~are~~] is deceptive;

(iii) [~~are~~] is unfairly discriminatory;

(iv) [~~provide~~] provides an unfair inducement; or

(v) unreasonably [~~restrain~~] restrains competition.

Section 5. Section 31A-23a-402.5 is enacted to read:

31A-23a-402.5. Inducements.

(1) (a) Except as provided in Subsection (2), a licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into, continue, or terminate an insurance contract by offering a benefit that is not:

(i) specified in the insurance contract; or

(ii) directly related to the insurance contract.

(b) An insurer may not make or knowingly allow an agreement of insurance that is not clearly expressed in the insurance contract to be issued or renewed.

(c) A licensee under this title may not absorb the tax under Section 31A-3-301.

(2) This section does not apply to a title insurer, a title producer, or an officer or employee of a title insurer or title producer.

(3) Items not prohibited by Subsection (1) include an insurer:

(a) reducing premiums because of expense savings;

(b) providing to a policyholder or insured one or more incentives, as defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to participate in a program or activity designed to reduce claims or claim expenses; or

(c) receiving premiums under an installment payment plan.

(4) Items not prohibited by Subsection (1) include a licensee, or an officer or employee of a licensee, either directly or through a third party:

(a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not conditioned on the purchase of a particular insurance product;

(b) extending credit on a premium to the insured:

(i) without interest, for no more than 90 days from the effective date of the insurance contract;

(ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (4)(b)(i); and

(iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (4)(b);

(c) preparing or conducting a survey that:

(i) is directly related to an accident and health insurance policy purchased from the licensee; or

(ii) is used by the licensee to assess the benefit needs and preferences of insureds, employers, or employees directly related to an insurance product sold by the licensee;

(d) providing limited human resource services that are directly related to an insurance product sold by the licensee, including:

(i) answering questions directly related to:

(A) an employee benefit offering or administration, if the insurance product purchased

from the licensee is accident and health insurance or health insurance; and

(B) employment practices liability, if the insurance product purchased from the licensee is property or casualty insurance; and

(ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;

(e) providing the following types of information or guidance:

(i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;

(ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or

(iii) providing information regarding:

(A) employee benefit issues;

(B) directly related insurance regulatory and legislative updates; or

(C) similar education about an insurance product sold by the licensee and how the insurance product interacts with tax law;

(f) preparing or providing a form that is directly related to an insurance product purchased from, or offered by, the licensee;

(g) preparing or providing documents directly related to a flexible spending account, but not providing ongoing administration of a flexible spending account;

(h) providing enrollment and billing assistance, including:

(i) providing benefit statements or new hire insurance benefits packages; and

(ii) providing technology services such as an electronic enrollment platform or application system;

(i) communicating coverages in writing and in consultation with the insured and employees;

(j) providing employee communication materials and notifications directly related to an insurance product purchased from a licensee;

(k) providing claims management and resolution to the extent permitted under the licensee's license;

(l) providing underwriting or actuarial analysis or services;

(m) negotiating with an insurer regarding the placement and pricing of an insurance product;

(n) recommending placement and coverage options;

(o) providing a health fair or providing assistance or advice on establishing or operating a wellness program, but not providing any payment for or direct operation of the wellness program;

(p) providing COBRA and Utah mini-COBRA administration, consultations, and other services directly related to an insurance product purchased from the licensee;

(q) assisting with a summary plan description;

(r) providing information necessary for the preparation of documents directly related to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended;

(s) providing information or services directly related to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;

(t) sending proof of coverage to a third party with a legitimate interest in coverage;

(u) providing information in a form approved by the commissioner and directly related to determining whether an insurance product sold by the licensee meets the requirements of a third party contract that requires or references insurance coverage;

(v) facilitating risk management services directly related to the insurance product sold or offered for sale by the licensee, including:

(i) risk management;

(ii) claims and loss control services; and

(iii) risk assessment consulting;

(w) otherwise providing services that are legitimately part of servicing an insurance product purchased from a licensee; and

(x) providing other directly related services approved by the department.

(5) An inducement prohibited under Subsection (1) includes a licensee, or an officer or employee of a licensee:

(a) (i) providing a premium or commission rebate;

(ii) paying the salary of an employee of a person who purchases an insurance product from the licensee; or

(iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (5)(b)(xii); or

(b) engaging in one or more of the following unless a fee is paid in accordance with Subsection (7):

(i) performing background checks of prospective employees;

(ii) providing legal services by a person licensed to practice law;

(iii) performing drug testing that is directly related to an insurance product purchased from the licensee;

(iv) preparing employer or employee handbooks, except that a licensee may:

(A) provide information for a medical benefit section of an employee handbook;

(B) provide information for the section of an employee handbook directly related to an employment practices liability insurance product purchased from the licensee; or

(C) prepare or print an employee benefit enrollment guide;

(v) providing job descriptions, postings, and applications for a person that purchases an employment practices liability insurance product from the licensee;

(vi) providing payroll services;

(vii) providing performance reviews or performance review training;

(viii) providing union advice;

(ix) providing accounting services;

(x) providing data analysis information technology programs, except as provided in Subsection (4)(h)(ii);

(xi) providing administration of health reimbursement accounts or health savings accounts; or

(xii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of the following prohibited benefits:

(A) performing background checks of prospective employees;

(B) providing legal services by a person licensed to practice law;

(C) performing drug testing that is directly related to an insurance product purchased from the insurer;

(D) preparing employer or employee handbooks;

(E) providing job descriptions postings, and applications;

(F) providing payroll services;

(G) providing performance reviews or performance review training;

(H) providing union advice;

(I) providing accounting services;

(J) providing discrimination testing; or

(K) providing data analysis information technology programs.

(6) A de minimis gift or meal not to exceed $25 for each individual receiving the gift or meal is presumed to be a social courtesy not conditioned on the purchase of a particular insurance product for purposes of Subsection (4)(a).

(7) If as provided under Subsection (5)(b) a licensee is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal or exceed the fair market value of the item.

Section 6. Section 31A-23a-504 is amended to read:

31A-23a-504. Sharing commissions.

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter as to the particular type of insurance to act in Utah as:

(i) a producer;

(ii) a limited line producer;

(iii) a customer service representative;

(iv) a consultant;

(v) a managing general agent; or

(vi) a reinsurance intermediary.

(b) A person may only accept commission compensation or other compensation as a person described in Subsections (1)(a)(i) through (vi) that is directly or indirectly the result of an insurance transaction if that person is licensed under this chapter to act as described in Subsection (1)(a).

(2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive a commission or other compensation that is directly or indirectly the result of an insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only:

(i) with another consultant licensed under this chapter; and

(ii) to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit:

(a) the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement;

(b) compensation paid to or received by a person for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

(i) the person is not licensed to sell insurance;

(ii) the person does not sell or provide opinions or advice on the product; and

(iii) the compensation does not depend on whether the referral results in a purchase or sale; or

(c) the payment or assignment of a commission, service fee, brokerage, or other valuable consideration to an agency or a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would constitute an

inducement or commission rebate under Section 31A-23a-402 or 31A-23a-402.5.

(4) (a) In selling a policy of title insurance, sharing of commissions under Subsection (1) may not occur if it will result in:

(i) an unlawful rebate;

(ii) compensation in connection with controlled business; or

(iii) payment of a forwarding fee or finder's fee.

(b) A person may share compensation for the issuance of a title insurance policy only to the extent that the person contributed to the search and examination of the title or other services connected with the title insurance policy.

(5) This section does not apply to a bail bond producer or bail enforcement agent as defined in Section 31A-35-102.

Section 7. Repealer.

This bill repeals:

Section 31A-23a-404, Extension of credit on premiums.

Section 8. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 63
H. B. 375
Passed March 7, 2011
Approved March 18, 2011
Effective May 10, 2011

SECURITY PERSONNEL LICENSING ACT AMENDMENTS

Chief Sponsor: Ken Ivory
Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies provisions relating to the licensure of occupations and professions.

Highlighted Provisions:

This bill:

- provides that a person holding a valid license as an armed private security officer may also function as an unarmed private security officer without the additional license.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-63-304, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 58-63-304 is amended to read:

58-63-304. Exemptions from licensure.

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

(a) a peace officer employed by or licensed as a contract security company; and

(b) a person employed by a contract security company for the sole purpose of operating or staffing security apparatus, including a magnetometer, magnetometer wand, x-ray viewing device, or other device approved by rule of the division.

(2) In addition to the exemptions from licensure in Section 58-1-307, a person holding a valid license as an armed private security officer under this chapter may also function as an unarmed private security officer without the additional license.

[~~(2)~~] (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules approving security apparatus under Subsection (1)(b).

CHAPTER 64
H. B. 385
Passed March 9, 2011
Approved March 18, 2011
Effective May 10, 2011

COUNTY JAIL MEDICAL EXPENSES

Chief Sponsor: Bradley M. Daw
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill provides a standard for when jails are to provide medical care to prisoners and amends procedures for collecting medical expenses owed by an inmate.

Highlighted Provisions:

This bill:

- provides standards regarding when a sheriff is required to provide medical care to persons being held in the county jail;
- allows a county to seek reimbursement from an inmate for medical care in addition to any other outstanding costs the inmate owes to the county jail at the time of release;
- includes inmate medical care in the costs incurred by a county that the court may order be paid by the inmate to the county as restitution; and
- extends the time period when a county jail may make a claim against a current inmate for costs incurred during a prior incarceration from three years to 10 years.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-8, as last amended by Laws of Utah 1993, Chapter 227
17-50-319, as last amended by Laws of Utah 2010, Chapter 366
76-3-201, as last amended by Laws of Utah 2010, Chapter 85

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

Section 1. Section 17-22-8 is amended to read:

17-22-8. Care of prisoners -- Funding of services -- Private contractor.

(1) Except as provided in Subsection (3), the sheriff shall:

(a) receive all persons committed to jail by competent authority; [~~and~~]

(b) provide them with necessary food, clothing, and bedding in the manner prescribed by the county legislative body[~~.~~]; and

(c) provide medical care when:

(i) the person's symptoms evidence a serious disease or injury;

(ii) the person's disease or injury is curable or may be substantially alleviated; and

(iii) the potential for harm to the person by reason of delay or the denial of medical care would be substantial.

(2) The expense incurred in providing these services to prisoners shall be paid from the county treasury, except as provided in Section 17-22-10.

(3) If the county executive contracts with a private contractor to provide the services required by this section, the sheriff shall provide only those services required of him by the contract between the county and the private contractor.

Section 2. Section 17-50-319 is amended to read:

17-50-319. County charges enumerated.

(1) County charges are:

(a) those incurred against the county by any law;

(b) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by the county or district attorney in the prosecution of criminal cases, except jury and witness fees;

(c) [~~the~~] medical [~~needs~~] care as described in Section 17-22-8, and other expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail, except as provided in Subsection (2);

(d) for a county not within the state district court administrative system, the sum required by law to be paid jurors in civil cases;

(e) all charges and accounts for services rendered by any justice court judge for services in the trial and examination of persons charged with a criminal offense not otherwise provided for by law;

(f) the contingent expenses necessarily incurred for the use and benefit of the county;

(g) every other sum directed by law to be raised for any county purposes under the direction of the county legislative body or declared a county charge;

(h) the fees of constables for services rendered in criminal cases;

(i) the necessary expenses of the sheriff and deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and deputies in performing the duties imposed upon them by law;

(j) the sums required by law to be paid by the county to jurors and witnesses serving at inquests and in criminal cases in justice courts; and

(k) subject to Subsection (2), expenses incurred by a health care facility or provider in providing medical services, treatment, hospitalization, or related transportation, at the request of a county sheriff for:

(i) persons booked into a county jail on a charge of a criminal offense; or

(ii) persons convicted of a criminal offense and committed to a county jail.

(2) (a) Expenses described in Subsections (1)(c) and (1)(k) are a charge to the county only to the extent that they exceed any private insurance in effect that covers those expenses.

(b) Subject to the priorities for payment under Subsection 64-13-30(1), the county may collect costs of medical care, treatment, hospitalization, and related transportation provided to the person described in Subsection (1)(k) who has the resources or the ability to pay.

(c) A county may seek reimbursement from a person described in Subsection (1)(k) for expenses incurred by the county in behalf of the inmate for medical care, treatment, hospitalization, or related transportation by:

(i) deducting the cost from the inmate's cash account on deposit with the detention facility during the inmate's incarceration or during a subsequent incarceration if the subsequent incarceration occurs within the same county and the incarceration is within [~~three~~] 10 years of the date of the expense in behalf of the inmate; [~~or~~]

(ii) placing a lien for the amount of the expense against the inmate's personal property held by the jail[~~.~~]; and

(iii) adding the amount of expenses incurred to any other amount owed by the inmate to the jail upon the inmate's release, as allowed under Subsection 76-3-201(6)(a).

(d) An inmate who receives medical care, treatment, hospitalization, or related transportation shall cooperate with the jail facility seeking payment or reimbursement under this section for the inmate's expenses.

(e) If there is no contract between a county jail and a health care facility or provider that establishes a fee schedule for medical services rendered, expenses under Subsection (1)(k) shall be commensurate with:

(i) for a health care facility, the current noncapitated state Medicaid rates; and

(ii) for a health care provider, 65% of the amount that would be paid to the health care provider:

(A) under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103; and

(B) if the person receiving the medical service were a covered employee under the Public Employees' Benefit and Insurance Program.

(f) Subsection (1)(k) does not apply to expenses of a person held at the jail at the request of an agency of the United States.

(g) A county that receives information from the Public Employees' Benefit and Insurance Program to enable the county to calculate the amount to be paid to a health care provider under Subsection (2)(e)(ii) shall keep that information confidential.

Section 3. Section 76-3-201 is amended to read:

76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e) (i) "Victim" means any person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(5) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court, the defendant shall pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) $100 for up to 100 miles a defendant is transported;

(B) $200 for 100 up to 200 miles a defendant is transported; and

(C) $350 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration and costs of medical care provided to the defendant while in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

CHAPTER 65
H. B. 405
Passed March 9, 2011
Approved March 18, 2011
Effective May 10, 2011

CHARGES FOR MEDICAL RECORDS

Chief Sponsor: Francis D. Gibson
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions of the Judicial Code relating to charges for medical records.

Highlighted Provisions:

This bill:

- requires a person authorized to provide medical records, other than a health care provider, to provide the medical records within 30 days after the request;
- establishes charges that a person authorized to provide medical records, other than a health care provider, may charge when copying medical records; and
- provides a repeal date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 212, Charges by Health Providers for Medical Records, by providing technical amendments.

Utah Code Sections Affected:

AMENDS:

63I-2-278, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382
78B-5-618, as renumbered and amended by Laws of Utah 2008, Chapter 3

Utah Code Sections Affected by Coordination Clause:

63I-2-278, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382
78B-5-618, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 63I-2-278 is amended to read:

63I-2-278. Repeal dates, Title 78A and Title 78B.

(1) Section 78A-9-103, Practicing law without a license, is repealed May 3, 2012.

[~~(2) Subsections 78B-12-301(1) and 78B-12-302(1) are repealed January 1, 2010.~~]

(2) Subsection 78B-5-618(4) is repealed January 1, 2016.

Section 2. Section 78B-5-618 is amended to read:

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) Pursuant to 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider as defined in Section 78B-3-403, when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(2) When a health care provider as defined in Section 78B-3-403 is not governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(3) A health care provider who provides a copy of a patient's records to the patient or the patient's personal representative may charge a reasonable fee to cover the health care provider's costs.

(4) Except for records provided under Section 26-1-37, a person authorized to provide medical records, other than a health care provider under Subsection (3), who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) $20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

Section 3. Coordinating H.B. 405 with H.B. 212 -- Technical amendments.

If this H.B. 405 and H.B. 212, Charges by Health Providers for Medical Records, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication:

(1) renumber Subsection 78B-5-618(4) in this H.B. 405 to Subsection 78B-5-618(5);

(2) modify the newly renumbered Subsection 78B-5-618(5) to read:

"(5) Except for records provided under Section 26-1-37, a person authorized to provide medical records, other than a health care provider under

Subsections (3) and (4), who provides a copy of a patient's records to a third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee to cover the health care provider's cost, but may not exceed the following rates:

(i) $20 for locating a patient's records, per request;

(ii) copying charges may not exceed 50 cents per page for the first 40 pages and 30 cents per page for each additional page;

(iii) the cost of postage when the third party has requested the copy be mailed; and

(iv) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act."; and

(3) modify Section 63I-2-278 to read:

"(1) Section 78A-9-103, Practicing law without a license, is repealed May 3, 2012.

[~~(2) Subsections 78B-12-301(1) and 78B-12-302(1) are repealed January 1, 2010.~~]

(2) Subsections 78B-5-618(4) and (5) are repealed January 1, 2016."

CHAPTER 66
H. B. 444
Passed March 8, 2011
Approved March 18, 2011
Effective May 10, 2011

OPERATION AND MAINTENANCE NEEDS REPORT FOR UTAH HIGHWAYS

Chief Sponsor: Julie Fisher
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends the Transportation Code.

Highlighted Provisions:

This bill:

- requires the Utah Department of Transportation to provide an annual report to the Transportation Interim Committee, by November 30 of each year, on the operation and maintenance needs for highways; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-1-201, as last amended by Laws of Utah 2009, Chapter 364

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

Section 1. Section 72-1-201 is amended to read:

72-1-201. Creation of Department of Transportation -- Functions, powers, duties, rights, and responsibilities.

There is created the Department of Transportation which shall:

(1) have the general responsibility for planning, research, design, construction, maintenance, security, and safety of state transportation systems;

(2) provide administration for state transportation systems and programs;

(3) implement the transportation policies of the state;

(4) plan, develop, construct, and maintain state transportation systems that are safe, reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and industry;

(5) establish standards and procedures regarding the technical details of administration of the state transportation systems as established by statute and administrative rule;

(6) advise the governor and the Legislature about state transportation systems needs;

(7) coordinate with utility companies for the reasonable, efficient, and cost-effective installation, maintenance, operation, relocation, and upgrade of utilities within state highway rights-of-way;

(8) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make policy and rules for the administration of the department, state transportation systems, and programs; and

(9) annually report to:

(a) the Transportation Interim Committee, by November 30 of each year, as to the operation and maintenance needs for highways; and

(b) an appropriate legislative committee as designated by the Legislative Management Committee the transfers that need to be made between all transportation-related funds to maintain the state highway construction program as prioritized by the commission.

CHAPTER 67
H. B. 481
Passed March 9, 2011
Approved March 18, 2011
Effective May 10, 2011

TRANSPORTATION OF MENTAL ILLNESS PATIENTS

Chief Sponsor: Paul Ray
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies code provisions relating to fees of county sheriffs.

Highlighted Provisions:

This bill:

- authorizes a sheriff to charge $2.50 for each mile necessarily traveled, in going only, in transporting a patient to or from a hospital or mental health facility.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-2.5, as last amended by Laws of Utah 2010, Chapters 75 and 254

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

Section 1. Section 17-22-2.5 is amended to read:

17-22-2.5. Fees of sheriff.

(1) (a) The legislative body of a county may set a fee for a service described in this section and charged by the county sheriff:

(i) in an ordinance adopted under Section 17-53-223; and

(ii) in an amount reasonably related to, but not exceeding, the actual cost of providing the service.

(b) If the legislative body of a county does not under Subsection (1)(a) set a fee charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2) through (7).

(2) Unless under Subsection (1) the legislative body of a county sets a fee amount for a fee described in this Subsection (2), the sheriff shall charge the following fees:

(a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and complaint, or garnishee execution, or other process by which an action or proceeding is commenced, on each defendant, including copies when furnished by plaintiff, $20;

(b) for taking or approving a bond or undertaking in any case in which he is authorized to take or approve a bond or undertaking, including justification, $5;

(c) for a copy of any writ, process or other paper when demanded or required by law, for each folio, 50 cents;

(d) for serving an attachment on property, or levying an execution, or executing an order of arrest or an order for the delivery of personal property, including copies when furnished by plaintiff, $50;

(e) for taking and keeping possession of and preserving property under attachment or execution or other process, the amount the court orders to a maximum of $15 per day;

(f) for advertising property for sale on execution, or any judgment, or order of sale, exclusive of the cost of publication, $15;

(g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive of acknowledgment, $15, to be paid by the grantee;

(h) for recording each deed, conveyance, or other instrument affecting real estate, exclusive of the cost of recording, $10, to be paid by the grantee;

(i) for serving a writ of possession or restitution, and putting any person entitled to possession into possession of premises, and removing occupant, $50;

(j) for holding each trial of right of property, to include all services in the matter, except mileage, $35;

(k) for conducting, postponing, or canceling a sale of property, $15;

(l) for taking a prisoner in civil cases from prison before a court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100 miles, $2.50;

(m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100 miles, $2.50;

(n) for receiving and paying over money on execution or other process, as follows:

(i) if the amount collected does not exceed $1,000, 2% of this amount, with a minimum of $1; and

(ii) if the amount collected exceeds $1,000, 2% on the first $1,000 and 1-1/2% on the balance; and

(o) for executing in duplicate a certificate of sale, exclusive of filing it, $10.

(3) The fees allowed by Subsection (2)(f) for the levy of execution and for advertising shall be collected from the judgment debtor as part of the execution in the same manner as the sum directed to be made.

(4) When serving an attachment on property, an order of arrest, or an order for the delivery of personal property, the sheriff may only collect traveling fees for the distance actually traveled beyond the distance required to serve the summons if the attachment or those orders:

(a) accompany the summons in the action; and

(b) may be executed at the time of the service of the summons.

(5) (a) (i) When traveling generally to serve notices, orders, process, or other papers, the sheriff may receive, except as otherwise provided under Subsection (1)(a), $2.50 for each mile necessarily traveled, in going only, computed from the courthouse for each person served, to a maximum of 100 miles.

(ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may receive, except as otherwise provided under Subsection (1)(a), $2.50 for each mile necessarily traveled, in going only, computed from the post office where received for each person served, to a maximum of 100 miles.

(b) The sheriff may only charge one mileage fee if any two or more papers are required to be served in the same action or proceeding at the same time and at the same address.

(c) If it is necessary to make more than one trip to serve any notice, order, process, or other paper, the sheriff may not collect more than two additional mileage charges.

(6) (a) For [~~delivering~~] transporting a patient to the Utah State Hospital or to or from a hospital or a mental health facility, as defined in Section 62A-15-602, when the cost of [~~delivery~~] transportation is payable by private individuals, the sheriff may collect, except as otherwise provided under Subsection (1)(a), $2.50 [~~per mile for the distance from the county seat of the sheriff's county to the Utah State Hospital~~] for each mile necessarily traveled, in going only, to a maximum of 100 miles.

(b) If the sheriff requires assistance to [~~deliver~~] transport the person [~~to the Utah State Hospital~~], the sheriff may also charge the actual and necessary cost of that assistance.

(7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under Section 53-10-404, the sheriff shall collect the fee of $100 in accordance with Section 53-10-404.

(b) The fee amount described in Subsection (7)(a) cannot be changed by a county legislative body under Subsection (1).

CHAPTER 68
S. B. 10
Passed February 9, 2011
Approved March 18, 2011
Effective May 10, 2011

LOCAL DISTRICT AMENDMENTS

Chief Sponsor: Dennis E. Stowell
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends provisions relating to a local district created to acquire or assess groundwater rights.

Highlighted Provisions:

This bill:

- defines terms;
- amends a local district's power to assess a groundwater right;
- identifies a groundwater right owner for purposes of a local district created to acquire or assess a groundwater right;
- authorizes the owners of groundwater rights to petition for the creation of a local district to acquire or assess groundwater rights;
- requires that a groundwater right owner petition or request proposing to create a local district to acquire or assess groundwater rights address certain issues;
- exempts, in certain circumstances, the creation of a local district to acquire or assess groundwater rights from the election requirement;
- amends provisions governing the election or appointment of a board of trustees;
- in certain circumstances, requires that the state engineer send notice to a local district; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-42-102, as last amended by Laws of Utah 2009, Chapters 92 and 246
11-42-202, as last amended by Laws of Utah 2010, Chapter 238
17B-1-103, as last amended by Laws of Utah 2010, Chapter 150
17B-1-201, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-202, as last amended by Laws of Utah 2010, Chapters 150 and 159
17B-1-203, as last amended by Laws of Utah 2010, Chapter 150
17B-1-204, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-205, as last amended by Laws of Utah 2008, Chapter 360
17B-1-209, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-210, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-211, as last amended by Laws of Utah 2010, Chapter 90
17B-1-213, as last amended by Laws of Utah 2010, Chapter 150
17B-1-214, as last amended by Laws of Utah 2010, Chapter 150
17B-1-215, as last amended by Laws of Utah 2010, Chapter 150
17B-1-302, as last amended by Laws of Utah 2008, Chapter 360
17B-1-402, as last amended by Laws of Utah 2009, Chapter 92
17B-1-414, as last amended by Laws of Utah 2009, Chapter 350
17B-1-416, as last amended by Laws of Utah 2009, Chapters 218 and 350
17B-1-502, as last amended by Laws of Utah 2009, Chapter 218
17B-1-505, as last amended by Laws of Utah 2009, Chapter 218
17B-1-1402, as enacted by Laws of Utah 2007, Chapter 329
17B-2a-905, as last amended by Laws of Utah 2010, Chapter 159
73-5-15, as last amended by Laws of Utah 2009, Chapter 388

ENACTS:

17B-1-104.5, Utah Code Annotated 1953

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

Section 1. Section 11-42-102 is amended to read:

11-42-102. Definitions.

(1) "Adequate protests" means timely filed, written protests under Section 11-42-203 that represent at least 50% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating:

(a) protests relating to:

(i) property that has been deleted from a proposed assessment area; or

(ii) an improvement that has been deleted from the proposed improvements to be provided to property within the proposed assessment area; and

(b) protests that have been withdrawn under Subsection 11-42-203(3).

(2) "Assessment area" means an area, or, if more than one area is designated, the aggregate of all areas within a local entity's jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.

(3) "Assessment bonds" means bonds that are:

(a) issued under Section 11-42-605; and

(b) payable in part or in whole from assessments levied in an assessment area, improvement revenues, and a guaranty fund or reserve fund.

(4) "Assessment fund" means a special fund that a local entity establishes under Section 11-42-412.

(5) "Assessment lien" means a lien on property within an assessment area that arises from the levy of an assessment, as provided in Section 11-42-501.

(6) "Assessment method" means the method by which an assessment is levied against property, whether by frontage, area, taxable value, fair market value, lot, number of connections, equivalent residential unit, or any combination of these methods.

(7) "Assessment ordinance" means an ordinance adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(8) "Assessment resolution" means a resolution adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(9) "Benefitted property" means property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.

(10) "Bond anticipation notes" means notes issued under Section 11-42-602 in anticipation of the issuance of assessment bonds.

(11) "Bonds" means assessment bonds and refunding assessment bonds.

(12) "Commercial area" means an area in which at least 75% of the property is devoted to the interchange of goods or commodities.

(13) "Connection fee" means a fee charged by a local entity to pay for the costs of connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or electrical system, whether or not improvements are installed on the property.

(14) "Contract price" means:

(a) the cost of acquiring an improvement, if the improvement is acquired; or

(b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.

(15) "Designation ordinance" means an ordinance adopted by a local entity under Section 11-42-206 designating an assessment area.

(16) "Designation resolution" means a resolution adopted by a local entity under Section 11-42-206 designating an assessment area.

(17) "Economic promotion activities" means activities that promote economic growth in a commercial area of a local entity, including:

(a) sponsoring festivals and markets;

(b) promoting business investment or activities;

(c) helping to coordinate public and private actions; and

(d) developing and issuing publications designed to improve the economic well-being of the commercial area.

(18) "Equivalent residential unit" means a dwelling, unit, or development that is equal to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.

(19) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a local district, the board of trustees of the local district;

(c) for a special service district:

(i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and

(d) for the military installation development authority created in Section 63H-1-201, the authority board, as defined in Section 63H-1-102.

(20) "Guaranty fund" means the fund established by a local entity under Section 11-42-701.

(21) "Improved property" means property proposed to be assessed within an assessment area upon which a residential, commercial, or other building has been built.

(22) "Improvement":

(a) (i) means any publicly owned infrastructure, system, or other facility that:

[~~(i)~~] (A) a local entity is authorized to provide; or

[~~(ii)~~] (B) the governing body of a local entity determines is necessary or convenient to enable the local entity to provide a service that the local entity is authorized to provide; and

[~~(b)~~] (ii) includes facilities in an assessment area, including a private driveway, an irrigation ditch, and a water turnout, that:

[~~(i)~~] (A) can be conveniently installed at the same time as an infrastructure, system, or other facility described in Subsection (22)(a)(i); and

[~~(ii)~~] (B) are requested by a property owner on whose property or for whose benefit the infrastructure, system, or other facility is being installed[~~.~~]; or

(b) for a local district created to assess groundwater rights in accordance with Section 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

(23) "Improvement revenues":

(a) means charges, fees, impact fees, or other revenues that a local entity receives from improvements; and

(b) does not include revenue from assessments.

(24) "Incidental refunding costs" means any costs of issuing refunding assessment bonds and calling, retiring, or paying prior bonds, including:

(a) legal and accounting fees;

(b) charges of financial advisors, escrow agents, certified public accountant verification entities, and trustees;

(c) underwriting discount costs, printing costs, the costs of giving notice;

(d) any premium necessary in the calling or retiring of prior bonds;

(e) fees to be paid to the local entity to issue the refunding assessment bonds and to refund the outstanding prior bonds;

(f) any other costs that the governing body determines are necessary or desirable to incur in connection with the issuance of refunding assessment bonds; and

(g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bonds.

(25) "Installment payment date" means the date on which an installment payment of an assessment is payable.

(26) "Interim warrant" means a warrant issued by a local entity under Section 11-42-601.

(27) "Jurisdictional boundaries" means:

(a) for a county, the boundaries of the unincorporated area of the county; and

(b) for each other local entity, the boundaries of the local entity.

(28) "Local district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts.

(29) "Local entity" means a county, city, town, special service district, local district, military installation development authority created in Section 63H-1-201, or other political subdivision of the state.

(30) "Local entity obligations" means assessment bonds, refunding assessment bonds, interim warrants, and bond anticipation notes issued by a local entity.

(31) "Mailing address" means:

(a) a property owner's last-known address using the name and address appearing on the last completed real property assessment roll of the county in which the property is located; and

(b) if the property is improved property:

(i) the property's street number; or

(ii) the post office box, rural route number, or other mailing address of the property, if a street number has not been assigned.

(32) "Net improvement revenues" means all improvement revenues that a local entity has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.

(33) "Operation and maintenance costs":

(a) means the costs that a local entity incurs in operating and maintaining improvements in an assessment area, whether or not those improvements have been financed under this chapter; and

(b) includes service charges, administrative costs, ongoing maintenance charges, and tariffs or other charges for electrical, water, gas, or other utility usage.

(34) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and all other incidental costs.

(35) "Prior bonds" means the assessment bonds that are refunded in part or in whole by refunding assessment bonds.

(36) "Prior assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

(37) "Prior assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

(38) "Project engineer" means the surveyor or engineer employed by or private consulting engineer engaged by a local entity to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

(39) "Property" includes real property and any interest in real property, including water rights and leasehold rights.

(40) "Property price" means the price at which a local entity purchases or acquires by eminent domain property to make improvements in an assessment area.

(41) "Provide" or "providing," with reference to an improvement, includes the acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and expansion of an improvement.

(42) "Public agency" means:

(a) the state or any agency, department, or division of the state; and

(b) a political subdivision of the state.

(43) "Reduced payment obligation" means the full obligation of an owner of property within an assessment area to pay an assessment levied on the property after the assessment has been reduced because of the issuance of refunding assessment bonds, as provided in Section 11-42-608.

(44) "Refunding assessment bonds" means assessment bonds that a local entity issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

(45) "Reserve fund" means a fund established by a local entity under Section 11-42-702.

(46) "Service" means:

(a) water, sewer, storm drainage, garbage collection, library, recreation, communications, or electric service;

(b) economic promotion activities; or

(c) any other service that a local entity is required or authorized to provide.

(47) "Special service district" has the same meaning as defined in Section 17D-1-102.

(48) "Unimproved property" means property upon which no residential, commercial, or other building has been built.

(49) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.

Section 2. Section 11-42-202 is amended to read:

11-42-202. Requirements applicable to a notice of a proposed assessment area designation.

(1) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) state that the local entity proposes to:

(i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;

(ii) provide an improvement to property within the proposed assessment area; and

(iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;

(b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;

(c) describe, in a general way, the improvements to be provided to the assessment area, including:

(i) the general nature of the improvements; and

(ii) the general location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;

(d) state the estimated cost of the improvements as determined by a project engineer;

(e) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated direct and indirect benefits to the property from the improvements;

(f) state the assessment method by which the governing body proposes to levy the assessment;

(g) state:

(i) the time within which and the location at which protests against designation of the proposed assessment area or of the proposed improvements are required to be filed; and

(ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements;

(h) state the date, time, and place of the public hearing required in Section 11-42-204;

(i) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:

(i) how the reserve fund will be funded and replenished; and

(ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

(j) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:

(i) estimates the total assessment to be levied against the particular parcel of property;

(ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements; and

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body;

(k) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:

(i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;

(ii) a description of how the estimated assessment will be determined;

(iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:

(A) in accordance with Section 11-42-406, current economic promotion activities; or

(B) current operation and maintenance costs;

(iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and

(v) a statement of the maximum number of years over which the assessment will be levied for:

(A) operation and maintenance costs; or

(B) economic promotion activities; and

(l) if the governing body intends to divide the proposed assessment area into zones under Subsection 11-42-201(1)(b), include a description of the proposed zones.

(2) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:

(a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;

(b) the estimated amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and

(c) provisions for any improvements described in Subsection 11-42-102(22)[~~(b)~~](a)(ii).

(3) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) (i) (A) be published in a newspaper of general circulation within the local entity's jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at least five but not more than 20 days before the deadline for filing protests specified in the notice under Subsection (1)(g); or

(B) if there is no newspaper of general circulation within the local entity's jurisdictional boundaries, be posted in at least three public places within the local entity's jurisdictional boundaries at least 20 but not more than 35 days before the deadline for filing protests specified in the notice under Subsection (1)(g); and

(ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for four weeks before the deadline for filing protests specified in the notice under Subsection (1)(g); and

(b) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (3)(a) to each owner of property to be assessed within the proposed assessment area at the property owner's mailing address.

Section 3. Section 17B-1-103 is amended to read:

17B-1-103. Local district status and powers.

(1) A local district:

(a) is:

(i) a body corporate and politic with perpetual succession;

(ii) a quasi-municipal corporation; and

(iii) a political subdivision of the state; and

(b) may sue and be sued.

(2) A local district may:

(a) acquire, by any lawful means, or lease any real property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(b) acquire, by any lawful means, any interest in real property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(c) transfer an interest in or dispose of any property or interest described in Subsections (2)(a) and (b);

(d) acquire or construct works, facilities, and improvements necessary or convenient to the full exercise of the district's powers, and operate, control, maintain, and use those works, facilities, and improvements;

(e) borrow money and incur indebtedness for any lawful district purpose;

(f) issue bonds, including refunding bonds:

(i) for any lawful district purpose; and

(ii) as provided in and subject to Part 11, Local District Bonds;

(g) levy and collect property taxes:

(i) for any lawful district purpose or expenditure, including to cover a deficit resulting from tax delinquencies in a preceding year; and

(ii) as provided in and subject to Part 10, Local District Property Tax Levy;

(h) as provided in Title 78B, Chapter 6, Part 5, Eminent Domain, acquire by eminent domain property necessary to the exercise of the district's powers;

(i) invest money as provided in Title 51, Chapter 7, State Money Management Act;

(j) (i) impose fees or other charges for commodities, services, or facilities provided by the district, to pay some or all of the district's costs of providing the commodities, services, and facilities, including the costs of:

(A) maintaining and operating the district;

(B) acquiring, purchasing, constructing, improving, or enlarging district facilities;

(C) issuing bonds and paying debt service on district bonds; and

(D) providing a reserve established by the board of trustees; and

(ii) take action the board of trustees considers appropriate and adopt regulations to assure the collection of all fees and charges that the district imposes;

(k) if applicable, charge and collect a fee to pay for the cost of connecting a customer's property to district facilities in order for the district to provide service to the property;

(l) enter into a contract that the local district board of trustees considers necessary, convenient, or desirable to carry out the district's purposes, including a contract:

(i) with the United States or any department or agency of the United States;

(ii) to indemnify and save harmless; or

(iii) to do any act to exercise district powers;

(m) purchase supplies, equipment, and materials;

(n) encumber district property upon terms and conditions that the board of trustees considers appropriate;

(o) exercise other powers and perform other functions that are provided by law;

(p) construct and maintain works and establish and maintain facilities, including works or facilities:

(i) across or along any public street or highway, subject to Subsection (3) and if the district:

(A) promptly restores the street or highway, as much as practicable, to its former state of usefulness; and

(B) does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it;

(ii) in, upon, or over any vacant public lands that are or become the property of the state, including school and institutional trust lands, as defined in Section 53C-1-103, if the director of the School and Institutional Trust Lands Administration, acting under Sections 53C-1-102 and 53C-1-303, consents; or

(iii) across any stream of water or watercourse, subject to Section 73-3-29;

(q) perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes;

(r) (i) except for a local district described in Subsection (2)(r)(ii), designate an assessment area and levy an assessment on land within the assessment area, as provided in Title 11, Chapter 42, Assessment Area Act; or

(ii) for a local district created to assess a groundwater right in a critical management area described in Subsection 17B-1-202(1)[~~(c)~~], designate an assessment area and levy an assessment, as provided in Title 11, Chapter 42, Assessment Area Act, on a groundwater right to facilitate a groundwater management plan;

(s) contract with another political subdivision of the state to allow the other political subdivision to use the district's surplus water or capacity or have an ownership interest in the district's works or facilities, upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public; and

(t) upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public, agree:

(i) with:

(A) another political subdivision of the state; or

(B) a public or private owner of property:

(I) on which the district has a right-of-way; or

(II) adjacent to which the district owns fee title to property; and

(ii) to allow the use of property:

(A) owned by the district; or

(B) on which the district has a right-of-way.

(3) With respect to a local district's use of a street or highway, as provided in Subsection (2)(p)(i):

(a) the district shall comply with the reasonable rules and regulations of the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway, concerning:

(i) an excavation and the refilling of an excavation;

(ii) the relaying of pavement; and

(iii) the protection of the public during a construction period; and

(b) the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway:

(i) may not require the district to pay a license or permit fee or file a bond; and

(ii) may require the district to pay a reasonable inspection fee.

(4) (a) A local district may:

(i) acquire, lease, or construct and operate electrical generation, transmission, and distribution facilities, if:

(A) the purpose of the facilities is to harness energy that results inherently from the district's:

(I) operation of a project or facilities that the district is authorized to operate; or

(II) providing a service that the district is authorized to provide;

(B) the generation of electricity from the facilities is incidental to the primary operations of the district; and

(C) operation of the facilities will not hinder or interfere with the primary operations of the district;

(ii) (A) use electricity generated by the facilities; or

(B) subject to Subsection (4)(b), sell electricity generated by the facilities to an electric utility or municipality with an existing system for distributing electricity.

(b) A district may not act as a retail distributor or seller of electricity.

(c) Revenue that a district receives from the sale of electricity from electrical generation facilities it owns or operates under this section may be used for any lawful district purpose, including the payment of bonds issued to pay some or all of the cost of acquiring or constructing the facilities.

(5) A local district may adopt and, after adoption, alter a corporate seal.

Section 4. Section 17B-1-104.5 is enacted to read:

17B-1-104.5. Groundwater right owner provisions -- Vote.

(1) For purposes of this title, an owner of a groundwater right, is on the date of the filing of a groundwater right owner petition or groundwater right owner request, the owner according to:

(a) a deed recorded with the county recorder in accordance with Section 73-1-10; or

(b) a water right of record filed in the state engineer's office in accordance with Section 73-1-10.

(2) For purposes of each provision of this title that requires the owners of groundwater rights covering a percentage of the total groundwater rights within the proposed local district to sign a request, petition, or protest:

(a) a groundwater right may not be included in the calculation of the required percentage unless the request or petition is signed by:

(i) except as provided in Subsection (2)(a)(ii), owners representing a majority ownership interest in that groundwater right; or

(ii) if the groundwater right is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that groundwater right;

(b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and

(ii) the person provides documentation accompanying the request or petition that reasonably substantiates the person's representative capacity; and

(c) subject to Subsection (2)(b), a duly appointed personal representative may sign a request or petition on behalf of the estate of a deceased owner.

(3) For an election by groundwater right owners described in this title, each owner of a groundwater right is entitled to cast one vote.

Section 5. Section 17B-1-201 is amended to read:

17B-1-201. Definitions.

As used in this part:

(1) "Applicable area" means:

(a) for a county, the unincorporated area of the county that is included within the proposed local district; or

(b) for a municipality, the area of the municipality that is included within the proposed local district.

(2) "Governing body" means:

(a) for a county or municipality, the legislative body of the county or municipality; and

(b) for a local district, the board of trustees of the local district.

(3) "Groundwater right owner petition" means a petition under Subsection 17B-1-203(1)(c).

(4) "Groundwater right owner request" means a request under Section 17B-1-204 that is signed by owners of water rights as provided in Subsection 17B-1-204(2)(b)(ii).

[~~(3)~~] (5) "Initiating local district" means a local district that adopts a resolution proposing the creation of a local district under Subsection 17B-1-203(1)[~~(d)~~](e).

[~~(4)~~] (6) "Petition" means a petition under Subsection 17B-1-203(1)(a) [~~or (b)~~], (b), or (c).

[~~(5)~~] (7) "Property owner petition" means a petition under Subsection 17B-1-203(1)(a).

[~~(6)~~] (8) "Property owner request" means a request under Section 17B-1-204 that is signed by owners of real property as provided in Subsection 17B-1-204(2)(b)(i).

[~~(7)~~] (9) "Registered voter request" means a request under Section 17B-1-204 that is signed by registered voters as provided in Subsection 17B-1-204(2)(b)[~~(ii)~~](iii).

[~~(8)~~] (10) "Registered voter petition" means a petition under Subsection 17B-1-203(1)(b).

[~~(9)~~] (11) "Request" means a request as described in Section 17B-1-204.

[~~(10)~~] (12) "Responsible body" means the governing body of:

(a) the municipality in which the proposed local district is located, if the petition or resolution

proposes the creation of a local district located entirely within a single municipality;

(b) the county in which the proposed local district is located, if the petition or resolution proposes the creation of a local district located entirely within a single county and all or part of the proposed local district is located within:

(i) the unincorporated part of the county; or

(ii) more than one municipality within the county;

(c) if the petition or resolution proposes the creation of a local district located within more than one county, the county whose boundaries include more of the area of the proposed local district than is included within the boundaries of any other county; or

(d) the initiating local district, if a resolution proposing the creation of a local district is adopted under Subsection 17B-1-203(1)[~~(d)~~](e).

[~~(11)~~] (13) "Responsible clerk" means the clerk of the county or the clerk or recorder of the municipality whose legislative body is the responsible body.

Section 6. Section 17B-1-202 is amended to read:

17B-1-202. Local district may be created -- Services that may be provided -- Limitations.

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

(i) the operation of an airport;

(ii) the operation of a cemetery;

(iii) fire protection, paramedic, and emergency services;

(iv) garbage collection and disposal;

(v) health care, including health department or hospital service;

(vi) the operation of a library;

(vii) abatement or control of mosquitos and other insects;

(viii) the operation of parks or recreation facilities or services;

(ix) the operation of a sewage system;

(x) street lighting;

(xi) the construction and maintenance of a right-of-way, including:

(A) a curb;

(B) a gutter;

(C) a sidewalk;

(D) a street;

(E) a road;

(F) a water line;

(G) a sewage line;

(H) a storm drain;

(I) an electricity line;

(J) a communications line; or

(K) a natural gas line;

(xii) transportation, including public transit and providing streets and roads;

(xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;

(xiv) in accordance with Subsection (1)(c), the acquisition or assessment of a groundwater right for the development and execution of a groundwater management plan in cooperation with and approved by the state engineer in accordance with Section 73-5-15;

(xv) law enforcement service; or

(xvi) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

(c) A groundwater management plan described in Subsection (1)(a)(xiv) may include the banking of groundwater rights by a local district in a critical management area as defined in Section 73-5-15 following the adoption of a groundwater management plan by the state engineer under Section 73-5-15.

(i) A local district may manage the groundwater rights it acquires under Subsection 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan described in Subsection (1)(c).

(ii) A groundwater right held by a local district to satisfy the provisions of a groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

(iii) (A) A local district may divest itself of a groundwater right subject to a determination that the groundwater right is not required to facilitate the groundwater management plan described in Subsection (1)(c).

(B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section 73-1-4 beginning on the date of divestiture.

(iv) Upon a determination by the state engineer that an area is no longer a critical management

area[~~, a water~~] as defined in Section 73-5-15, a groundwater right held by the local district is subject to Section 73-1-4.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

(i) sewage system; or

(ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)[~~(c)~~](d), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

(a) paramedic service; and

(b) emergency service, including hazardous materials response service.

(7) A local district created before May 11, 2010, authorized to provide the construction and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection (1)(a)(xi) on or after May 11, 2010.

Section 7. Section 17B-1-203 is amended to read:

17B-1-203. Process to initiate the creation of a local district -- Petition or resolution.

(1) The process to create a local district may be initiated by:

(a) unless the proposed local district is a local district to acquire or assess a groundwater right under Section 17B-1-202, and subject to Section 17B-1-204, a petition signed by the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 33% of the total private land area within the proposed local district as a whole and within each applicable area;

(iii) is equal in value to at least 25% of the value of all private real property within the proposed local district as a whole and within each applicable area; and

(iv) complies with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

(b) subject to Section 17B-1-204, a petition that:

(i) is signed by registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 33% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last regular general election prior to the filing of the petition; and

(ii) complies with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

(c) if the proposed local district is a local district to acquire or assess a groundwater right under Section 17B-1-202, and subject to Section 17B-1-204, a petition signed by the owners of groundwater rights that:

(i) are diverted within the proposed local district;

(ii) cover at least 33% of the total amount of groundwater diverted in accordance with groundwater rights within the proposed local district as a whole and within each applicable area; and

(iii) comply with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

[~~(c)~~] (d) a resolution proposing the creation of a local district, adopted by the legislative body of each county whose unincorporated area includes and each municipality whose boundaries include any of the proposed local district; or

[~~(d)~~] (e) a resolution proposing the creation of a local district, adopted by the board of trustees of an existing local district whose boundaries completely encompass the proposed local district, if:

(i) the proposed local district is being created to provide one or more components of the same service that the initiating local district is authorized to provide; and

(ii) the initiating local district is not providing to the area of the proposed local district any of the components that the proposed local district is being created to provide.

(2) (a) Each resolution under Subsection (1)[~~(c) or~~] (d) or (e) shall:

(i) describe the area proposed to be included in the proposed local district;

(ii) be accompanied by a map that shows the boundaries of the proposed local district;

(iii) describe the service proposed to be provided by the proposed local district;

(iv) if the resolution proposes the creation of a specialized local district, specify the type of specialized local district proposed to be created;

(v) explain the anticipated method of paying the costs of providing the proposed service;

(vi) state the estimated average financial impact on a household within the proposed local district;

(vii) state the number of members that the board of trustees of the proposed local district will have, consistent with the requirements of Subsection 17B-1-302(2);

(viii) for a proposed basic local district:

(A) state whether the members of the board of trustees will be elected or appointed or whether some members will be elected and some appointed, as provided in Section 17B-1-1402;

(B) if one or more members will be elected, state the basis upon which each elected member will be elected; and

(C) if applicable, explain how the election or appointment of board members will transition from one method to another based on stated milestones or events, as provided in Section 17B-1-1402;

(ix) for a proposed improvement district whose remaining area members or county members, as those terms are defined in Section 17B-2a-404, are to be elected, state that those members will be elected; and

(x) for a proposed service area that is entirely within the unincorporated area of a single county, state whether the initial board of trustees will be:

(A) the county legislative body;

(B) appointed as provided in Section 17B-1-304; or

(C) elected as provided in Section 17B-1-306.

(b) Each county or municipal legislative body adopting a resolution under Subsection (1)[~~(c)~~](d) shall, on or before the first public hearing under Section 17B-1-210, mail or deliver a copy of the resolution to the responsible body if the county or municipal legislative body's resolution is one of multiple resolutions adopted by multiple county or municipal legislative bodies proposing the creation of the same local district.

[~~(3) Each petition under Subsection (1)(a) or (b) to create a local district to acquire a groundwater right under Subsection 17B-1-103(2)(a) or (b) shall explain the anticipated method of paying for the groundwater right acquisition.~~]

Section 8. Section 17B-1-204 is amended to read:

17B-1-204. Request for service required before filing of petition -- Request requirements.

(1) A petition may not be filed until after:

(a) a request has been filed with:

(i) the clerk of each county in whose unincorporated area any part of the proposed local district is located; and

(ii) the clerk or recorder of each municipality in which any part of the proposed local district is located; and

(b) each county and municipality with which a request under Subsection (1)(a) is filed:

(i) has adopted a resolution under Subsection 17B-1-212(1) indicating whether it will provide the requested service; or

(ii) is considered to have declined to provide the requested service under Subsection 17B-1-212(2) or (3).

(2) Each request under Subsection (1)(a) shall:

(a) ask the county or municipality to provide the service proposed to be provided by the proposed local district within the applicable area; and

(b) be signed by:

(i) unless the request is a request to create a local district to acquire or assess a groundwater right under Section 17B-1-202, the owners of private real property that:

(A) is located within the proposed local district;

(B) covers at least 10% of the total private land area within the applicable area; and

(C) is equal in value to at least 7% of the value of all private real property within the applicable area; [~~or~~]

(ii) if the request is a request to create a local district to acquire or assess a groundwater right under Section 17B-1-202, the owners of groundwater rights that:

(A) are diverted within the proposed local district; and

(B) cover at least 10% of the amount of groundwater diverted in accordance with groundwater rights within the applicable area; or

[~~(ii)~~] (iii) registered voters residing within the applicable area equal in number to at least 10% of the number of votes cast in the applicable area for the office of governor at the last general election prior to the filing of the request.

(3) For purposes of Subsections (1) and (2), an area proposed to be annexed to a municipality in a

petition under Section 10-2-403 filed before and still pending at the time of filing of a petition shall be considered to be part of that municipality.

Section 9. Section 17B-1-205 is amended to read:

17B-1-205. Petition and request requirements -- Withdrawal of signature.

(1) Each petition and request shall:

(a) indicate the typed or printed name and current residence address of each property owner, groundwater right owner, or registered voter signing the petition;

(b) (i) if it is a property owner request or petition, indicate the address of the property as to which the owner is signing the request or petition; or

(ii) if it is a groundwater right owner request or petition, indicate the location of the diversion of the groundwater as to which the owner is signing the groundwater right owner request or petition;

(c) describe the entire area of the proposed local district;

(d) be accompanied by a map showing the boundaries of the entire proposed local district;

(e) specify the service proposed to be provided by the proposed local district;

(f) if the petition or request proposes the creation of a specialized local district, specify the type of specialized local district proposed to be created;

(g) for a proposed basic local district:

(i) state whether the members of the board of trustees will be elected or appointed or whether some members will be elected and some appointed, as provided in Section 17B-1-1402;

(ii) if one or more members will be elected, state the basis upon which each elected member will be elected; and

(iii) if applicable, explain how the election or appointment of board members will transition from one method to another based on stated milestones or events, as provided in Section 17B-1-1402;

(h) for a proposed improvement district whose remaining area members or county members, as those terms are defined in Section 17B-2a-404, are to be elected, state that those members will be elected; and

(i) for a proposed service area that is entirely within the unincorporated area of a single county, state whether the initial board of trustees will be:

(i) the county legislative body;

(ii) appointed as provided in Section 17B-1-304; or

(iii) elected as provided in Section 17B-1-306; [~~and~~]

(j) designate up to five signers of the petition or request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each[~~.~~];

(k) if the petition or request is a groundwater right owner petition or request proposing the creation of a local district to acquire a groundwater right under Section 17B-1-202, explain the anticipated method:

(i) of paying for the groundwater right acquisition; and

(ii) of addressing blowing dust created by the reduced use of water; and

(l) if the petition or request is a groundwater right owner petition or request proposing the creation of a local district to assess a groundwater right under Section 17B-1-202, explain the anticipated method:

(i) of assessing the groundwater right and securing payment of the assessment; and

(ii) of addressing blowing dust created by the reduced use of water.

(2) A signer of a request or petition may withdraw or, once withdrawn, reinstate the signer's signature at any time before the filing of the request or petition by filing a written withdrawal or reinstatement with:

(a) in the case of a request:

(i) the clerk of the county or the clerk or recorder of the municipality in whose applicable area the signer's property is located, if the request is a property owner request; [~~or~~]

(ii) the clerk of the county or the clerk or recorder of the municipality in whose applicable area the signer's groundwater diversion point is located, if the request is a groundwater right owner request; or

[~~(ii)~~] (iii) the clerk of the county or the clerk or recorder of the municipality in whose applicable area the signer resides, if the request is a registered voter request; or

(b) in the case of a petition, the responsible clerk.

Section 10. Section 17B-1-209 is amended to read:

17B-1-209. Petition certification -- Amended petition.

(1) [~~Within~~] No later than five days after the [~~filing of a petition~~] day on which a petition is filed, the responsible clerk shall mail a copy of the petition to the clerk of each other county and the clerk or recorder of each municipality in which any part of the proposed local district is located.

(2) (a) [~~Within~~] No later than 35 days after the [~~filing of a petition~~] day on which a petition is filed, the clerk of each county whose unincorporated area includes and the clerk or recorder of each municipality whose boundaries include part of the proposed local district shall:

(i) with the assistance of other county or municipal officers from whom the county clerk or

municipal clerk or recorder requests assistance, determine, for the clerk or recorder's respective county or municipality, whether the petition complies with the requirements of Subsection 17B-1-203(1)(a) [~~or~~], (b), or (c), as the case may be, and Subsections 17B-1-208(2), (3), and (4); and

(ii) notify the responsible clerk in writing of the clerk or recorder's determination under Subsection (2)(a)(i).

(b) The responsible clerk may rely on the determinations of other county clerks or municipal clerks or recorders under Subsection (2)(a) in making the responsible clerk's determinations and certification or rejection under Subsection (3).

(3) (a) Within 45 days after the filing of a petition, the responsible clerk shall:

(i) determine whether the petition complies with Subsection 17B-1-203(1)(a) [~~or~~], (b), or (c), as the case may be, Subsection 17B-1-205(1), and Section 17B-1-208; and

(ii) (A) if the responsible clerk determines that the petition complies with the applicable requirements:

(I) (Aa) certify the petition and deliver the certified petition to the responsible body; and

(Bb) mail or deliver written notification of the certification to the contact sponsor; or

(II) for each petition described in Subsection (3)(b)(i), deliver a copy of the petition to the legislative body of each county whose unincorporated area includes and each municipality whose boundaries include any of the proposed basic local district, with a notice indicating that the clerk has determined that the petition complies with applicable requirements; or

(B) if the responsible clerk determines that the petition fails to comply with any of the applicable requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(b) (i) A petition for which an election is not required under Subsection 17B-1-214(3) and that proposes the creation of a basic local district that has within its boundaries fewer than one residential dwelling unit per 10 acres of land may not be certified without the approval, by resolution, of the legislative body of each county whose unincorporated area includes and each municipality whose boundaries include any of the proposed local district.

(ii) Before adopting a resolution giving its approval under Subsection (3)(b)(i), a county or municipal legislative body may hold one or more public hearings on the petition.

(iii) If a petition described in Subsection (3)(b)(i) is approved as provided in that subsection, the responsible clerk shall, within 10 days after its approval:

(A) certify the petition and deliver the certified petition to the responsible body; and

(B) mail or deliver written notification of the certification to the contact sponsor.

(4) Except for a petition described in Subsection (3)(b)(i), if the responsible clerk fails to certify or reject a petition within 45 days after its filing, the petition shall be considered to be certified.

(5) The responsible clerk shall certify or reject petitions in the order in which they are filed.

(6) (a) If the responsible clerk rejects a petition under Subsection (3)(a)(ii)(B), the petition may be amended to correct the deficiencies for which it was rejected and then refiled.

(b) A valid signature on a petition that was rejected under Subsection (3)(a)(ii)(B) may be used toward fulfilling the applicable signature requirement of the petition as amended under Subsection (6)(a).

(c) If a petition is amended and refiled under Subsection (6)(a) after having been rejected by the responsible clerk under Subsection (3)(a)(ii)(B), the amended petition shall be considered as newly filed, and its processing priority shall be determined by the date on which it is refiled.

(7) The responsible clerk and each county clerk and municipal clerk or recorder shall act in good faith in making the determinations under this section.

Section 11. Section 17B-1-210 is amended to read:

17B-1-210. Public hearing.

(1) The legislative body of each county and municipality with which a request is filed or that adopts a resolution under Subsection 17B-1-203(1)[~~(c)~~](d) and the board of trustees of each local district that adopts a resolution under Subsection 17B-1-203(1)[~~(d)~~](e) shall hold a public hearing or a set of public hearings, sufficient in number and location to ensure that no substantial group of residents of the proposed local district need travel an unreasonable distance to attend a public hearing.

(2) Each public hearing under Subsection (1) shall be held:

(a) no later than 45 days after:

(i) for a public hearing on a request, certification of a request under Subsection 17B-1-206(1)(b)(i); or

(ii) for a public hearing on a resolution, adoption of a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e);

(b) within the proposed local district;

(c) except as provided in Subsections (6) and (7), within the applicable area; and

(d) for the purpose of:

(i) for a public hearing on a request, allowing public input on:

(A) whether the requested service is needed in the area of the proposed local district;

(B) whether the service should be provided by the county or municipality or the proposed local district; and

(C) all other matters relating to the request or the proposed local district; or

(ii) for a public hearing on a resolution, allowing the public to ask questions of and obtain further information from the governing body holding the hearing regarding the issues contained in or raised by the resolution.

(3) A quorum of each governing body holding a public hearing under this section shall be present throughout each hearing held by that governing body.

(4) Each hearing under this section shall be held on a weekday evening other than a holiday beginning no earlier than 6 p.m.

(5) At the beginning and end of each hearing concerning a resolution, the governing body shall announce the deadline for filing protests and generally explain the protest procedure and requirements.

(6) Two or more county or municipal legislative bodies may jointly hold a hearing or set of hearings required under this section if all the requirements of this section, other than the requirements of Subsection (2)(c), are met as to each hearing.

(7) Notwithstanding Subsection (2)(c), a governing body may hold a public hearing or set of public hearings outside the applicable area if:

(a) there is no reasonable place to hold a public hearing within the applicable area; and

(b) the public hearing or set of public hearings is held as close to the applicable area as reasonably possible.

Section 12. Section 17B-1-211 is amended to read:

17B-1-211. Notice of public hearings -- Publication of resolution.

(1) Before holding a public hearing or set of public hearings under Section 17B-1-210, the legislative body of each county or municipality with which a request is filed or that adopts a resolution under Subsection 17B-1-203(1)[~~(c)~~](d) and the board of trustees of each local district that adopts a resolution under Subsection 17B-1-203(1)[~~(d)~~](e) shall:

(a) (i) (A) except as provided in Subsections (1)(a)(i)(B) and (1)(a)(ii), publish notice in a newspaper or combination of newspapers of general circulation within the applicable area in accordance with Subsection (2); or

(B) if there is no newspaper or combination of newspapers of general circulation within the applicable area, post notice in accordance with Subsection (2):

(I) at least one notice per 1,000 population of that area; and

(II) at places within the area that are most likely to provide actual notice to residents of the area; and

(ii) publish notice on the Utah Public Notice Website created in Section 63F-1-701, for two weeks before the hearing or the first of the set of hearings; or

(b) mail a notice to each registered voter residing within and each owner of real property located within the proposed local district.

(2) Each published notice under Subsection (1)(a)(i)(A) shall:

(a) be no less than 1/4 page in size, use type no smaller than 18 point, and be surrounded by a 1/4-inch border;

(b) if possible, appear in a newspaper that is published at least one day per week;

(c) if possible, appear in a newspaper of general interest and readership in the area and not of limited subject matter;

(d) be placed in a portion of the newspaper other than where legal notices and classified advertisements appear; and

(e) be run at least once each week for two successive weeks, with the final publication being no less than three and no more than 10 days before the hearing or the first of the set of hearings.

(3) Each notice required under Subsection (1) shall:

(a) if the hearing or set of hearings is concerning a resolution:

(i) contain the entire text or an accurate summary of the resolution; and

(ii) state the deadline for filing a protest against the creation of the proposed local district;

(b) clearly identify each governing body involved in the hearing or set of hearings;

(c) state the date, time, and place for the hearing or set of hearings and the purposes for the hearing or set of hearings; and

(d) describe or include a map of the entire proposed local district.

(4) County or municipal legislative bodies may jointly provide the notice required under this section if all the requirements of this section are met as to each notice.

Section 13. Section 17B-1-213 is amended to read:

17B-1-213. Protest after adoption of resolution -- Adoption of resolution approving creation for certain districts.

(1) For purposes of this section, "adequate protests" means protests that are:

(a) filed with the county clerk, municipal clerk or recorder, or local district secretary or clerk, as the case may be, within 60 days after the last public hearing required under Section 17B-1-210; and

(b) signed by:

(i) the owners of private real property that:

(A) is located within the proposed local district;

(B) covers at least 25% of the total private land area within the applicable area; and

(C) is equal in value to at least 15% of the value of all private real property within the applicable area; or

(ii) registered voters residing within the applicable area equal in number to at least 25% of the number of votes cast in the applicable area for the office of governor at the last general election prior to the adoption of the resolution.

(2) If adequate protests are filed, the governing body that adopted a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e):

(a) may not:

(i) hold or participate in an election under Subsection 17B-1-214(1) with respect to the applicable area;

(ii) take any further action under the protested resolution to create a local district or include the applicable area in a local district; or

(iii) for a period of two years, adopt a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e) proposing the creation of a local district including substantially the same area as the applicable area and providing the same service as the proposed local district in the protested resolution; and

(b) shall, within five days after receiving adequate protests, mail or deliver written notification of the adequate protests to the responsible body.

(3) Subsection (2)(a) may not be construed to prevent an election from being held for a proposed local district whose boundaries do not include an applicable area that is the subject of adequate protests.

(4) (a) If adequate protests are not filed with respect to a resolution proposing the creation of a local district for which an election is not required under Subsection 17B-1-214(3)[~~(c), (d), or (e)~~](d), (e), or (f), a resolution approving the creation of the local district may be adopted by:

(i) (A) the legislative body of a county whose unincorporated area is included within the proposed local district; and

(B) the legislative body of a municipality whose area is included within the proposed local district; or

(ii) the board of trustees of the initiating local district.

(b) Each resolution adopted under Subsection (4)(a) shall:

(i) describe the area included in the local district;

(ii) be accompanied by a map that shows the boundaries of the local district;

(iii) describe the service to be provided by the local district;

(iv) state the name of the local district; and

(v) provide a process for the appointment of the members of the initial board of trustees.

Section 14. Section 17B-1-214 is amended to read:

17B-1-214. Election -- Exceptions.

(1) (a) Except as provided in Subsection (3) and in Subsection 17B-1-213(2)(a), an election on the question of whether the local district should be created shall be held by:

(i) if the proposed local district is located entirely within a single county, the responsible clerk; or

(ii) except as provided under Subsection (1)(b), if the proposed local district is located within more than one county, the clerk of each county in which part of the proposed local district is located, in cooperation with the responsible clerk.

(b) Notwithstanding Subsection (1)(a)(ii), if the proposed local district is located within more than one county and the only area of a county that is included within the proposed local district is located within a single municipality, the election for that area shall be held by the municipal clerk or recorder, in cooperation with the responsible clerk.

(2) Each election under Subsection (1) shall be held at the next special or regular general election date that is:

(a) for an election pursuant to a property owner or registered voter petition, more than 45 days after certification of the petition under Subsection 17B-1-209(3)[~~(b)(i)~~](a); or

(b) for an election pursuant to a resolution, more than 60 days after the latest hearing required under Section 17B-1-210.

(3) The election requirement of Subsection (1) does not apply to:

(a) a petition filed under Subsection 17B-1-203(1)(a) if it contains the signatures of the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 67% of the total private land area within the proposed local district as a whole and within each applicable area; and

(iii) is equal in value to at least 50% of the value of all private real property within the proposed local district as a whole and within each applicable area;

(b) a petition filed under Subsection 17B-1-203(1)(b) if it contains the signatures of registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 67% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the

office of governor at the last general election prior to the filing of the petition;

(c) a groundwater right owner petition filed under Subsection 17B-1-203(1)(c) if the petition contains the signatures of the owners of groundwater rights that:

(i) are diverted within the proposed local district; and

(ii) cover at least 67% of the total amount of groundwater diverted in accordance with groundwater rights within the proposed local district as a whole and within each applicable area;

[~~(c)~~] (d) a resolution adopted under Subsection 17B-1-203(1)[~~(c)~~](d) on or after May 5, 2003 that proposes the creation of a local district to provide fire protection, paramedic, and emergency services or law enforcement service, if the proposed local district includes a majority of the unincorporated area of one or more counties;

[~~(d)~~] (e) a resolution adopted under Subsection 17B-1-203(1)[~~(c) or~~](d) or (e) if the resolution proposes the creation of a local district that has no registered voters within its boundaries; or

[~~(e)~~] (f) a resolution adopted under Subsection 17B-1-203(1)[~~(c)~~](d) on or after May 11, 2010 that proposes the creation of a local district described in Subsection 17B-1-202(1)(a)(xiv).

(4) (a) If the proposed local district is located in more than one county, the responsible clerk shall coordinate with the clerk of each other county and the clerk or recorder of each municipality involved in an election under Subsection (1) so that the election is held on the same date and in a consistent manner in each jurisdiction.

(b) The clerk of each county and the clerk or recorder of each municipality involved in an election under Subsection (1) shall cooperate with the responsible clerk in holding the election.

(c) Except as otherwise provided in this part, each election under Subsection (1) shall be governed by Title 20A, Election Code.

Section 15. Section 17B-1-215 is amended to read:

17B-1-215. Notice and plat to lieutenant governor -- Recording requirements -- Certificate of incorporation -- Local district incorporated as specialized local district or basic local district -- Effective date.

(1) (a) Within the time specified in Subsection (1)(b), the responsible body shall file with the lieutenant governor:

(i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

(b) The responsible body shall file the documents listed in Subsection (1)(a) with the lieutenant governor within 10 days after:

(i) the canvass of an election under Section 17B-1-214, if a majority of those voting at the election within the proposed local district as a whole vote in favor of the creation of a local district;

(ii) certification of a petition as to which the election requirement of Subsection 17B-1-214(1) does not apply because of Subsection 17B-1-214(3)(a) [~~or~~], (b), or (c); or

(iii) adoption of a resolution, under Subsection 17B-1-213(4) approving the creation of a local district for which an election was not required under Subsection 17B-1-214(3)[~~(c), (d), or (e)~~](d), (e), or (f), by the legislative body of each county whose unincorporated area is included within and the legislative body of each municipality whose area is included within the proposed local district, or by the board of trustees of the initiating local district.

(2) Upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5, the responsible body shall:

(a) if the local district is located within the boundary of a single county, submit to the recorder of that county:

(i) the original:

(A) notice of an impending boundary action;

(B) certificate of incorporation; and

(C) approved final local entity plat; and

(ii) if applicable, a certified copy of each resolution adopted under Subsection 17B-1-213(4); or

(b) if the local district is located within the boundaries of more than a single county:

(i) submit to the recorder of one of those counties:

(A) the original of the documents listed in Subsections (2)(a)(i)(A), (B), and (C); and

(B) if applicable, a certified copy of each resolution adopted under Subsection 17B-1-213(4); and

(ii) submit to the recorder of each other county:

(A) a certified copy of the documents listed in Subsection (2)(a)(i)(A), (B), and (C); and

(B) if applicable, a certified copy of each resolution adopted under Subsection 17B-1-213(4).

(3) The area of each local district consists of:

(a) if an election was held under Section 17B-1-214, the area of the new local district as approved at the election;

(b) if an election was not required because of Subsection 17B-1-214(3)(a) [~~or (b)~~], (b), or (c), the area of the proposed local district as described in the petition; or

(c) if an election was not required because of Subsection 17B-1-214(3)[~~(c), (d), or (e)~~](d), (e), or

(f), the area of the new local district as described in the resolution adopted under Subsection 17B-1-213(4).

(4) (a) Upon the lieutenant governor's issuance of the certificate of incorporation under Section 67-1a-6.5, the local district is created and incorporated as:

(i) the type of specialized local district that was specified in the petition under Subsection 17B-1-203(1)(a) [~~or~~], (b), or (c) or resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e), if the petition or resolution proposed the creation of a specialized local district; or

(ii) a basic local district, if the petition or resolution did not propose the creation of a specialized local district.

(b) (i) The effective date of a local district's incorporation for purposes of assessing property within the local district is governed by Section 59-2-305.5.

(ii) Until the documents listed in Subsection (2) are recorded in the office of the recorder of each county in which the property is located, a newly incorporated local district may not:

(A) levy or collect a property tax on property within the local district;

(B) levy or collect an assessment on property within the local district; or

(C) charge or collect a fee for service provided to property within the local district.

Section 16. Section 17B-1-302 is amended to read:

17B-1-302. Board member qualifications -- Number of board members.

(1) (a) Each member of a local district board of trustees shall be:

(i) a registered voter at the location of the member's residence; and

(ii) except as provided in Subsections (1)(b) and (c), a resident within:

(A) the boundaries of the local district; and

(B) if applicable, the boundaries of the division of the local district from which the member is elected.

(b) (i) As used in this Subsection (1)(b):

(A) "Proportional number" means the number of members of a board of trustees that bears, as close as mathematically possible, the same proportion to all members of the board that the number of seasonally occupied homes bears to all residences within the district that receive service from the district.

(B) "Seasonally occupied home" means a single-family residence:

(I) that is located within the local district;

(II) that receives service from the local district; and

(III) whose owner:

(Aa) does not reside permanently at the residence; and

(Bb) may occupy the residence on a temporary or seasonal basis.

(ii) If over 50% of the residences within a local district that receive service from the local district are seasonally occupied homes, the requirement under Subsection (1)(a)(ii) is replaced, for a proportional number of members of the board of trustees, with the requirement that the member be an owner of land, or an agent or officer of the owner of land, that:

(A) receives service from the district; and

(B) is located within:

(I) the local district; and

(II) if applicable, the division from which the member is elected.

(c) For a board of trustees member in a basic local district that has within its boundaries fewer than one residential dwelling unit per 10 acres of land, the requirement under Subsection (1)(a)(ii) is replaced with the requirement that the member be an owner of land within the local district that receives service from the district, or an agent or officer of the owner.

(2) Except as otherwise provided by statute, the number of members of each board of trustees of a local district shall be an odd number that is no less than three.

(3) For a newly created local district, the number of members of the initial board of trustees shall be the number specified:

(a) for a local district whose creation was initiated by a petition under Subsection 17B-1-203(1)(a) [~~or~~], (b), or (c), in the petition; or

(b) for a local district whose creation was initiated by a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e), in the resolution.

(4) (a) For an existing local district, the number of members of the board of trustees may be changed by a two-thirds vote of the board of trustees.

(b) No change in the number of members of a board of trustees under Subsection (4)(a) may:

(i) violate Subsection (2); or

(ii) serve to shorten the term of any member of the board.

Section 17. Section 17B-1-402 is amended to read:

17B-1-402. Annexation of area outside local district.

(1) An area outside the boundaries of a local district may be annexed to the local district, as provided in this part, in order to provide to the area a service that the local district provides.

(2) The area proposed to be annexed:

(a) may consist of one or more noncontiguous areas; and

(b) need not be adjacent to the boundaries of the proposed annexing local district.

(3) With respect to a local district in the creation of which an election was not required under Subsection 17B-1-214(3)[~~(c)~~](d):

(a) an unincorporated area of a county may not be annexed to the local district unless, after annexation, at least a majority of the unincorporated area of the county will be included in the local district; and

(b) the annexation of any part of an area within a municipality shall include all of the area within the municipality.

(4) A local district may not annex an area located within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, without the authority's approval.

Section 18. Section 17B-1-414 is amended to read:

17B-1-414. Resolution approving an annexation -- Filing of notice and plat with lieutenant governor -- Recording requirements -- Effective date.

(1) (a) Subject to Subsection (1)(b), the local district board shall adopt a resolution approving the annexation of the area proposed to be annexed or rejecting the proposed annexation within 30 days after:

(i) expiration of the protest period under Subsection 17B-1-412(2), if sufficient protests to require an election are not filed;

(ii) for a petition that meets the requirements of Subsection 17B-1-413(1):

(A) a public hearing under Section 17B-1-409 is held, if the board chooses or is required to hold a public hearing under Subsection 17B-1-413(2)(a)(ii); or

(B) expiration of the time for submitting a request for public hearing under Subsection 17B-1-413(2)(a)(ii)(B), if no request is submitted and the board chooses not to hold a public hearing.

(b) If the local district has entered into an agreement with the United States that requires the consent of the United States for an annexation of territory to the district, a resolution approving annexation under this part may not be adopted until the written consent of the United States is obtained and filed with the board of trustees.

(2) (a) (i) Within the time specified under Subsection (2)(a)(ii), the board shall file with the lieutenant governor:

(A) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3) and, if applicable, Subsection (2)(b); and

(B) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

(ii) The board shall file the documents listed in Subsection (2)(a)(i) with the lieutenant governor:

(A) within 30 days after adoption of a resolution under Subsection (1), Subsection 17B-1-412(3)(c)(i), or Section 17B-1-415; and

(B) as soon as practicable after receiving the notice under Subsection 10-2-425(2) of a municipal annexation that causes an automatic annexation to a local district under Section 17B-1-416.

(b) For an automatic annexation to a local district under Section 17B-1-416, the notice of an impending boundary action required under Subsection (2)(a) shall state that an area outside the boundaries of the local district is being automatically annexed to the local district under Section 17B-1-416 because of a municipal annexation under Title 10, Chapter 2, Part 4, Annexation.

(c) Upon the lieutenant governor's issuance of a certificate of annexation under Section 67-1a-6.5, the board shall:

(i) if the annexed area is located within the boundary of a single county, submit to the recorder of that county:

(A) the original:

(I) notice of an impending boundary action;

(II) certificate of annexation; and

(III) approved final local entity plat; and

(B) a certified copy of the annexation resolution; or

(ii) if the annexed area is located within the boundaries of more than a single county:

(A) submit to the recorder of one of those counties:

(I) the original of the documents listed in Subsections (2)(c)(i)(A)(I), (II), and (III); and

(II) a certified copy of the annexation resolution; and

(B) submit to the recorder of each other county:

(I) a certified copy of the documents listed in Subsection (2)(c)(i)(A)(I), (II), and (III); and

(II) a certified copy of the annexation resolution.

(3) (a) As used in this Subsection (3), "fire district annexation" means an annexation under this part of an area located in a county of the first class to a local district:

(i) created to provide fire protection, paramedic, and emergency services; and

(ii) in the creation of which an election was not required because of Subsection 17B-1-214(3)[~~(c)~~](d).

(b) An annexation under this part is complete and becomes effective:

(i) (A) on July 1 for a fire district annexation, if the lieutenant governor issues the certificate of annexation under Section 67-1a-6.5 from January 1 through June 30; or

(B) on January 1 for a fire district annexation, if the lieutenant governor issues the certificate of annexation under Section 67-1a-6.5 from July 1 through December 31; or

(ii) upon the lieutenant governor's issuance of the certificate of annexation under Section 67-1a-6.5, for any other annexation.

(c) (i) The effective date of a local district annexation for purposes of assessing property within the annexed area is governed by Section 59-2-305.5.

(ii) Until the documents listed in Subsection (2)(c) are recorded in the office of the recorder of each county in which the property is located, a local district may not:

(A) levy or collect a property tax on property within the annexed area;

(B) levy or collect an assessment on property within the annexed area; or

(C) charge or collect a fee for service provided to property within the annexed area.

(iii) Subsection (3)(c)(ii)(C):

(A) may not be construed to limit a local district's ability before annexation to charge and collect a fee for service provided to property that is outside the local district's boundary; and

(B) does not apply until 60 days after the effective date, under Subsection (3)(b), of the local district's annexation, with respect to a fee that the local district was charging for service provided to property within the annexed area immediately before the area was annexed to the local district.

Section 19. Section 17B-1-416 is amended to read:

17B-1-416. Automatic annexation to a district providing fire protection, paramedic, and emergency services or law enforcement service.

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

(a) the local district provides:

(i) fire protection, paramedic, and emergency services; or

(ii) law enforcement service;

(b) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)[~~(c)~~](d); and

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

(2) The effective date of an annexation under this section is governed by Subsection 17B-1-414(3)(b).

Section 20. Section 17B-1-502 is amended to read:

17B-1-502. Withdrawal of area from local district -- Automatic withdrawal in certain circumstances -- Definitions.

(1) (a) An area within the boundaries of a local district may be withdrawn from the local district only as provided in this part.

(b) Except as provided in Subsections (2) and (3), the inclusion of an area of a local district within a municipality because of a municipal incorporation under Title 10, Chapter 2, Part 1, Incorporation, or a municipal annexation or boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, does not affect the requirements under this part for the process of withdrawing that area from the local district.

(2) (a) An area within the boundaries of a local district is automatically withdrawn from the local district by the annexation of the area to a municipality or the adding of the area to a municipality by boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, if:

(i) the local district provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)[~~(c)~~](d); and

(iii) before annexation or boundary adjustment, the boundaries of the local district do not include any of the annexing municipality.

(b) The effective date of a withdrawal under this Subsection (2) is governed by Subsection 17B-1-512(2)(b).

(3) (a) An area within the boundaries of a local district located in a county of the first class is automatically withdrawn from the local district by the incorporation of a municipality whose boundaries include the area if:

(i) the local district provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) an election for the creation of the local district was not required because of Subsection 17B-1-214(3)[~~(c)~~](d); and

(iii) the legislative body of the newly incorporated municipality:

(A) adopts a resolution approving the withdrawal that includes the legal description of the area to be withdrawn; and

(B) delivers a copy of the resolution to the board of trustees of the local district.

(b) The effective date of a withdrawal under this Subsection (3) is governed by Subsection 17B-1-512(2)(a).

Section 21. Section 17B-1-505 is amended to read:

17B-1-505. Withdrawal of municipality in certain districts providing fire protection, paramedic, and emergency services or law enforcement service.

(1) (a) The process to withdraw an area from a local district may be initiated by a resolution adopted by the legislative body of a municipality that is entirely within the boundaries of a local district:

(i) that provides:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service; and

(ii) in the creation of which an election was not required because of Subsection 17B-1-214(3)[~~(c)~~](d).

(b) Within 10 days after adopting a resolution under Subsection (1)(a), the municipal legislative body shall submit to the board of trustees of the local district written notice of the adoption of the resolution, accompanied by a copy of the resolution.

(2) If a resolution is adopted under Subsection (1)(a), the municipal legislative body shall hold an election at the next municipal general election that is more than 60 days after adoption of the resolution on the question of whether the municipality should withdraw from the local district.

(3) If a majority of those voting on the question of withdrawal at an election held under Subsection (2) vote in favor of withdrawal, the municipality shall be withdrawn from the local district.

(4) (a) Within 10 days after the canvass of an election at which a withdrawal under this section is submitted to voters, the municipal legislative body shall send written notice to the board of the local district from which the municipality is proposed to withdraw.

(b) Each notice under Subsection (4)(a) shall:

(i) state the results of the withdrawal election; and

(ii) if the withdrawal was approved by voters, be accompanied by a map or legal description of the area to be withdrawn, adequate for purposes of the county assessor and recorder.

(5) The effective date of a withdrawal under this section is governed by Subsection 17B-1-512(2)(a).

Section 22. Section 17B-1-1402 is amended to read:

17B-1-1402. Board of trustees of a basic local district.

(1) As specified in a petition under Subsection 17B-1-203(1)(a) or (b) or a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e), and except as provided in Subsection (2), the members of a board of trustees of a basic local district may be:

(a) (i) elected by registered voters; or

(ii) appointed by the responsible body, as defined in Section 17B-1-201; or

(b) if the area of the local district contains less than one residential dwelling unit per 50 acres of land at the time the resolution is adopted or the petition is filed, elected by the owners of real property within the local district based on:

(i) the amount of acreage owned by property owners;

(ii) the assessed value of property owned by property owners; or

(iii) water rights:

(A) relating to the real property within the local district;

(B) that the real property owner:

(I) owns; or

(II) has transferred to the local district.

(2) As specified in a groundwater right owner petition under Subsection 17B-1-203(1)(c) or a resolution under Subsection 17B-1-203(1)(d) or (e), the members of a board of trustees of a basic local district created to manage groundwater rights the district acquires or assesses under Section 17B-1-202 shall be:

(a) subject to Section 17B-1-104.5, elected by the owners of groundwater rights that are diverted within the local district;

(b) appointed by the responsible body, as defined in Section 17B-1-201; or

(c) elected or appointed as provided in Subsection (3).

[~~(2)~~] (3) A petition under Subsection 17B-1-203(1)(a) or (b) and a resolution under Subsection 17B-1-203(1)[~~(c) or~~] (d) or (e) may provide for a transition from one or more methods of election or appointment under Subsection (1) or (2) to one or more other methods of election or appointment based upon milestones or events that the petition or resolution identifies.

Section 23. Section 17B-2a-905 is amended to read:

17B-2a-905. Service area board of trustees.

(1) (a) Except as provided in Subsection (2):

(i) the initial board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the petition or

resolution that initiated the process of creating the service area:

(A) consist of the county legislative body;

(B) be appointed, as provided in Section 17B-1-304; or

(C) be elected, as provided in Section 17B-1-306;

(ii) if the board of trustees of a service area consists of the county legislative body, the board may adopt a resolution providing for future board members to be appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306; and

(iii) members of the board of trustees of a service area shall be elected, as provided in Section 17B-1-306, if:

(A) the service area is not entirely within the unincorporated area of a single county;

(B) a petition is filed with the board of trustees requesting that board members be elected, and the petition is signed by registered voters within the service area equal in number to at least 10% of the number of registered voters within the service area who voted at the last gubernatorial election; or

(C) an election is held to authorize the service area's issuance of bonds.

(b) If members of the board of trustees of a service area are required to be elected under Subsection (1)(a)(iii)(C) because of a bond election:

(i) board members shall be elected in conjunction with the bond election;

(ii) the board of trustees shall:

(A) establish a process to enable potential candidates to file a declaration of candidacy sufficiently in advance of the election; and

(B) provide a ballot for the election of board members separate from the bond ballot; and

(iii) except as provided in this Subsection (1)(b), the election shall be held as provided in Section 17B-1-306.

(2) (a) This Subsection (2) applies to a service area created on or after May 5, 2003 if:

(i) the service area was created to provide:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service; and

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)[~~(c)~~](d).

(b) (i) Each county whose unincorporated area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint three members to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(iii) Each member appointed by a county or municipality under Subsection (2)(b)(i) or (ii) shall be an elected official of the appointing county or municipality, respectively.

(c) Notwithstanding Subsection 17B-1-302(2), the number of members of a board of trustees of a service area described in Subsection (2)(a) shall be the number resulting from application of Subsection (2)(b).

Section 24. Section 73-5-15 is amended to read:

73-5-15. Groundwater management plan.

(1) As used in this section:

(a) "Critical management area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield.

(b) "Safe yield" means the amount of groundwater that can be withdrawn from a groundwater basin over a period of time without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical and chemical integrity.

(2) (a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.

(b) The objectives of a groundwater management plan are to:

(i) limit groundwater withdrawals to safe yield;

(ii) protect the physical integrity of the aquifer; and

(iii) protect water quality.

(c) The state engineer shall adopt a groundwater management plan for a groundwater basin if more than 1/3 of the water right owners in the groundwater basin request that the state engineer adopt a groundwater management plan.

(3) (a) In developing a groundwater management plan, the state engineer may consider:

(i) the hydrology of the groundwater basin;

(ii) the physical characteristics of the groundwater basin;

(iii) the relationship between surface water and groundwater, including whether the groundwater should be managed in conjunction with hydrologically connected surface waters;

(iv) the geographic spacing and location of groundwater withdrawals;

(v) water quality;

(vi) local well interference; and

(vii) other relevant factors.

(b) The state engineer shall base the provisions of a groundwater management plan on the principles of prior appropriation.

(c) (i) The state engineer shall use the best available scientific method to determine safe yield.

(ii) As hydrologic conditions change or additional information becomes available, safe yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).

(4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a groundwater basin shall be limited to the basin's safe yield.

(ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer shall:

(A) determine the groundwater basin's safe yield; and

(B) adopt a groundwater management plan for the groundwater basin.

(iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.

(b) When adopting a groundwater management plan for a critical management area, the state engineer shall, based on economic and other impacts to an individual water user or a local community caused by the implementation of safe yield limits on withdrawals, allow gradual implementation of the groundwater management plan.

(c) (i) In consultation with the state engineer, water users in a groundwater basin may agree to participate in a voluntary arrangement for managing withdrawals at any time, either before or after a determination that groundwater withdrawals exceed the groundwater basin's safe yield.

(ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other law.

(iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.

(5) To adopt a groundwater management plan, the state engineer shall:

(a) give notice as specified in Subsection (7) at least 30 days before the first public meeting held in accordance with Subsection (5)(b):

(i) that the state engineer proposes to adopt a groundwater management plan;

(ii) describing generally the land area proposed to be included in the groundwater management plan; and

(iii) stating the location, date, and time of each public meeting to be held in accordance with Subsection (5)(b);

(b) hold one or more public meetings in the geographic area proposed to be included within the groundwater management plan to:

(i) address the need for a groundwater management plan;

(ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;

(iii) address safe yield and any other subject that may be included in the groundwater management plan;

(iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and

(v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

(c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;

(d) (i) at least 60 days prior to final adoption of the groundwater management plan, publish notice:

(A) that a draft of the groundwater management plan has been proposed; and

(B) specifying where a copy of the draft plan may be reviewed; and

(ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

(e) provide notice of the adoption of the groundwater management plan.

(6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.

(7) (a) A notice required by this section shall be:

(i) published:

(A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and

(B) in accordance with Section 45-1-101 for two weeks;

(ii) published conspicuously on the state engineer's Internet website; and

(iii) mailed to each of the following that has within its boundaries a portion of the land area to be included within the proposed groundwater management plan:

(A) county;

(B) incorporated city or town;

(C) a local district created to acquire or assess a groundwater right under Title 17B, Chapter 1, Provisions Applicable to All Local Districts;

[~~(C)~~] (D) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;

[~~(D)~~] (E) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

[~~(E)~~] (F) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

[~~(F)~~] (G) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

[~~(G)~~] (H) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

[~~(H)~~] (I) special service district providing water, sewer, drainage, or flood control services, under Title 17D, Chapter 1, Special Service District Act;

[~~(I)~~] (J) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and

[~~(J)~~] (K) conservation district, under Title 17D, Chapter 3, Conservation District Act.

(b) A notice required by this section is effective upon substantial compliance with Subsections (7)(a)(i) through (iii).

(8) A groundwater management plan may be amended in the same manner as a groundwater management plan may be adopted under this section.

(9) The existence of a groundwater management plan does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.

(10) (a) A person aggrieved by a groundwater management plan may challenge any aspect of the groundwater management plan by filing a complaint within 60 days after the adoption of the groundwater management plan in the district court for any county in which the groundwater basin is found.

(b) Notwithstanding Subsection (9), a person may challenge the components of a groundwater management plan only in the manner provided by Subsection (10)(a).

(c) An action brought under this Subsection (10) is reviewed de novo by the district court.

(d) A person challenging a groundwater management plan under this Subsection (10) shall join the state engineer as a defendant in the action challenging the groundwater management plan.

(e) (i) Within 30 days after the day on which a person files an action challenging any aspect of a groundwater management plan under Subsection (10)(a), the person filing the action shall publish notice of the action:

(A) in a newspaper of general circulation in the county in which the district court is located; and

(B) in accordance with Section 45-1-101 for two weeks.

(ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for two consecutive weeks.

(iii) The notice required by Subsection (10)(e)(i) shall:

(A) identify the groundwater management plan the person is challenging;

(B) identify the case number assigned by the district court;

(C) state that a person affected by the groundwater management plan may petition the district court to intervene in the action challenging the groundwater management plan; and

(D) list the address for the clerk of the district court in which the action is filed.

(iv) (A) Any person affected by the groundwater management plan may petition to intervene in the action within 60 days after the day on which notice is last published under Subsections (10)(e)(i) and (ii).

(B) The district court's treatment of a petition to intervene under this Subsection (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

(v) A district court in which an action is brought under Subsection (10)(a) shall consolidate all actions brought under that subsection and include in the consolidated action any person whose petition to intervene is granted.

(11) A groundwater management plan adopted or amended in accordance with this section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(12) Recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.

(13) Nothing in this section may be interpreted to require the development, implementation, or consideration of a groundwater management plan as a prerequisite or condition to the exercise of the state engineer's enforcement powers under other law, including powers granted under Section 73-2-25.

(14) A groundwater management plan adopted in accordance with this section may not apply to the dewatering of a mine.

(15) (a) A groundwater management plan adopted by the state engineer before May 1, 2006, remains in force and has the same legal effect as it had on the day on which it was adopted by the state engineer.

(b) If a groundwater management plan that existed before May 1, 2006, is amended on or after May 1, 2006, the amendment is subject to this section's provisions.

CHAPTER 69
S. B. 22
Passed February 2, 2011
Approved March 18, 2011
Effective May 10, 2011
(Retrospective operation to January 1, 2011)

CORPORATE FRANCHISE AND INCOME TAX AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill amends provisions related to corporate franchise and income taxes.

Highlighted Provisions:

This bill:

- amends the definition of "common ownership" for purposes of corporate franchise and income taxes;
- repeals provisions related to certain distributions by corporations from depletion reserves;
- addresses the circumstances under which certain receipts, rents, royalties, or sales are considered to be in this state;
- addresses intercompany transactions for purposes of apportionment of income to the state; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2010, Chapter 198
59-7-108, as repealed and reenacted by Laws of Utah 1993, Chapter 169
59-7-319, as last amended by Laws of Utah 2008, Chapters 105 and 283
59-7-404.5, as enacted by Laws of Utah 1994, Chapter 83

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

Section 1. Section 59-7-101 is amended to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" is as defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code[~~, except that 50% shall be substituted for 80%~~]; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) (a) "Controlling entity of a captive real estate investment trust" means an entity that:

(i) is treated as an association taxable as a corporation under the Internal Revenue Code;

(ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code; and

(iii) directly, indirectly, or constructively holds more than 50% of:

(A) the voting power of a captive real estate investment trust; or

(B) the value of the shares or beneficial interests of a captive real estate investment trust.

(b) "Controlling entity of a captive real estate investment trust" does not include:

(i) a real estate investment trust, except for a captive real estate investment trust;

(ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or

(iii) a foreign real estate investment trust.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(9) "Corporate return" or "return" includes a combined report.

(10) "Corporation" includes:

(a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and

(b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

(11) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(12) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.

(b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

(i) the right to do business through incorporation or qualification;

(ii) the owning, renting, or leasing of real or personal property within this state; and

(iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

(13) "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.

(14) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of:

(I) farmers; or

(II) fruit growers; or

(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A); and

(ii) organized and operated on a cooperative basis to:

(A) (I) market the products of members of the cooperative or the products of other producers; and

(II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or

(B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and

(II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

(A) the terms:

(I) "member"; and

(II) "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A).

(ii) The rules made under this Subsection (14)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

(15) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(16) (a) "Foreign operating company" means a corporation if:

(i) the corporation is incorporated in the United States;

(ii) at least 80% of the corporation's business activity, as determined under Section 59-7-401, is conducted outside the United States; and

(iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions, the corporation has:

(A) at least $1,000,000 of payroll located outside the United States; and

(B) at least $2,000,000 of property located outside the United States.

(b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

(17) (a) "Foreign real estate investment trust" means:

(i) a business entity organized outside the laws of the United States if:

(A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:

(I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

(II) cash or cash equivalents; or

(III) one or more securities issued or guaranteed by the United States;

(B) the business entity is:

(I) not subject to income taxation:

(Aa) on amounts distributed to the business entity's beneficial owners; and

(Bb) in the jurisdiction in which the business entity is organized; or

(II) exempt from income taxation on an entity level in the jurisdiction in which the business entity is organized;

(C) the business entity distributes at least 85% of the business entity's taxable income, as computed in the jurisdiction in which the business entity is organized, to the holders of the business entity's:

(I) shares or beneficial interests; and

(II) on an annual basis;

(D) (I) not more than 10% of the following is held directly, indirectly, or constructively by a single person:

(Aa) the voting power of the business entity; or

(Bb) the value of the shares or beneficial interests of the business entity; or

(II) the shares of the business entity are regularly traded on an established securities market; and

(E) the business entity is organized in a country that has a tax treaty with the United States; or

(ii) a listed Australian property trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining:

(i) "cash or cash equivalents";

(ii) "established securities market"; or

(iii) "listed Australian property trust."

(18) "Income" includes losses.

(19) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

(20) "Nonbusiness income" is as defined in Section 59-7-302.

(21) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.

(22) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

(23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

(24) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

(c) "Unitary group" does not include an S corporation.

(31) "United States" includes the 50 states and the District of Columbia.

(32) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

(33) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that may be carried back or carried forward to the current taxable year in accordance with Section 59-7-110.

(34) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(35) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

(36) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group that are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

(B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a unitary group.

(37) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

Section 2. Section 59-7-108 is amended to read:

59-7-108. Distributions by corporations.

(1) (a) For [~~the purpose~~] purposes of this chapter, [~~each~~] a distribution is made out of earnings or profits to the extent [~~thereof~~] of the earnings or profits, and from the most recently accumulated earnings or profits. [~~Any~~]

(b) (i) Subject to Subsection (1)(b)(ii), any earnings or profits accumulated or increase in value of property accrued before January 1, 1931, may be excluded from taxable income after the earnings and profits accumulated after December 31, 1930 have been distributed[~~, but any such~~].

(ii) A distribution described in Subsection (1)(b)(i) shall be applied against and reduce the basis of the stock.

(2) [~~If~~] (a) Subject to Subsection (2)(b), if any distribution [~~which~~] that is not in partial or complete liquidation is made by a corporation to its shareholders, is not out of increase in value of property accrued before January 1, 1931, and is not out of earnings or profits, [~~then~~] the amount of [~~such~~] the distribution shall be applied against and reduce the basis of the stock.

(b) If [~~the~~] a distribution described in Subsection (2)(a) is in excess of [~~such~~] the basis of the stock, the excess shall be treated as a gain from the sale or exchange of property. [~~The provisions of this subsection also apply to distributions from depletion reserves based on percentage depletion allowed by this chapter.~~]

Section 3. Section 59-7-319 is amended to read:

59-7-319. Circumstances under which a receipt, rent, royalty, or sale is considered to be in this state.

(1) (a) Subject to Subsection (1)(b), as used in this section, "regulated investment company" is as defined in Section 851(a), Internal Revenue Code, in effect for the taxable year.

(b) "Regulated investment company" includes a trustee or sponsor of an employee benefit plan that has an account in a regulated investment company.

(2) The following are considered to be in this state:

(a) a rent in connection with:

(i) real property if the real property is in this state; or

(ii) tangible personal property if the tangible personal property is in this state;

(b) a royalty in connection with real property if the real property is in this state;

(c) a sale in connection with real property if the real property is in this state; or

(d) other income in connection with real property or tangible personal property if the real property or tangible personal property is in this state.

(3) (a) Subject to Subsection (3)(b), a receipt from the performance of a service is considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission

may by rule prescribe the circumstances under which a purchaser of a service receives a greater benefit of the service in this state than in any other state.

(4) (a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state.

(b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

(c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year.

(5) (a) Notwithstanding Subsections (2) through (4), a sale, other than a sale of tangible personal property, derived, directly or indirectly, from the sale of management, distribution, or administration services to, or on behalf of a regulated investment company, is considered to be in this state:

(i) to the extent that shareholders of the regulated investment company are domiciled in the state; and

(ii) as provided in this Subsection (5).

(b) For purposes of Subsection (5)(a), the amount of a sale, other than a sale of tangible personal property, that is considered to be in this state is calculated by determining the product of:

(i) the taxpayer's total dollar amount of sales of the services; and

(ii) a fraction, the numerator of which is the average of the sum of the beginning of the year and the end of year balance of shares owned by the investment company shareholders domiciled in this state and the denominator of which is the average of the sum of the beginning of the year and end of year balance of shares owned by the investment company shareholders.

(c) A separate computation shall be made to determine the sales for each investment company.

(6) (a) Notwithstanding Subsections (2) through (4) and subject to Subsection (6)(b), the following sales are considered to be in this state to the extent that customers of a securities brokerage business are domiciled in the state:

(i) a sale, other than a sale of tangible personal property, derived, directly or indirectly, from the sale of a securities brokerage service by a taxpayer if that taxpayer is primarily engaged in providing a service in this state to a regulated investment company; or

(ii) a sale, other than a sale of tangible personal property, derived, directly or indirectly, from the sale of a securities brokerage service by a taxpayer that is an affiliate of a taxpayer that provides a service in this state to a regulated investment company.

(b) For purposes of Subsection (6)(a), the amount of a sale, other than a sale of tangible personal property, that is considered to be in this state is calculated by determining the product of:

(i) the taxpayer's total dollar amount of sales of securities brokerage services; and

(ii) a fraction, the numerator of which is the receipts from securities brokerage services from customers of the taxpayer domiciled in this state, and the denominator of which is the receipts from securities brokerage services from all customers of the taxpayer.

(7) Whether sales by an airline, other than sales of tangible personal property, are in this state is determined as provided in this section, subject to the calculation required by Subsection 59-7-317(2).

Section 4. Section 59-7-404.5 is amended to read:

59-7-404.5. Adjustment to apportionment factors for corporations in a combined report -- Sales factor -- Property factor.

For purposes of [~~the~~] apportionment [~~sections~~] under Part 3 [~~of this chapter~~], Allocation and Apportionment of Income - Utah UDITPA Provisions:

(1) [~~Corporations~~] corporations filing a combined report under Section 59-7-402 or 59-7-403 may not include intercompany sales or other intercompany transactions between the corporations included in the combined report [~~when~~] in determining the sales factor[~~.~~]; and

[~~(2) Intercompany rents between members of a combined report may not be considered in the computation of the property factor.~~]

(2) corporations filing a combined report under Section 59-7-402 or 59-7-403 may not include intercompany rents or other intercompany transactions between the corporations included in the combined report in determining the property factor.

Section 5. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2011.

CHAPTER 70
S. B. 50
Passed February 25, 2011
Approved March 18, 2011
Effective May 10, 2011

ENHANCED PENALTIES FOR HIV POSITIVE OFFENDER AMENDMENTS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding standards for charging an HIV positive offender with certain felony sexual offenses, and also changes the notification requirements regarding the offender's positive HIV test results.

Highlighted Provisions:

This bill:

- provides that an HIV positive person engaged in prostitution, patronizing a prostitute, or sexual solicitation, and who is HIV positive, is guilty of a third degree felony;
- modifies definitions;
- provides that a person who has tested positive for the HIV infection shall be notified of the test results in person by a law enforcement agency, Department of Corrections, or Department of Health, or an authorized representative of any of these agencies;
- requires that the notice contain the signature of the HIV positive individual and the name and signature of the person providing the notice; and
- provides that failure to provide the notice, or failure to provide notice in the manner or form prescribed, does not create any civil liability and does not create a defense to any prosecution under this part.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1309, as enacted by Laws of Utah 1993, Chapter 179
76-10-1310, as enacted by Laws of Utah 1993, Chapter 179
76-10-1312, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

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

Section 1. Section 76-10-1309 is amended to read:

76-10-1309. Enhanced penalties -- HIV positive offender.

A person who is [~~an HIV positive individual and has actual knowledge of that fact and has received written personal notice of the positive test results from a law enforcement agency pursuant to Section 76-10-1312 and is~~] convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV positive individual, and the person:

[~~(1) prostitution under Section 76-10-1302 shall be guilty of a felony of the third degree;~~]

[~~(2) patronizing a prostitute under Section 76-10-1303 shall be guilty of a felony of a third degree; or~~]

[~~(3) sexual solicitation under Section 76-10-1313 shall be guilty of a felony of the third degree.~~]

(1) has actual knowledge of the fact; or

(2) has previously been convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313.

Section 2. Section 76-10-1310 is amended to read:

76-10-1310. Definitions.

(1) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive confirmatory test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(2) "HIV positive individual" means a person who [~~is HIV positive and has actual knowledge of his disease~~] has an HIV infection as determined under Subsection (1).

(3) "Local law enforcement agency" means the agency responsible for investigation of the violations of Sections 76-10-1302, 76-10-1303, and 76-10-1313, the filing of charges which may lead to conviction, and the conducting of or obtaining the results of tests for HIV infection.

[~~(4) "Notice" means the HIV positive individual has been notified by the law enforcement agency as provided in Section 76-10-1312.~~]

[~~(5)~~] (4) "Positive" means an indication of the HIV infection as defined in Subsection (1).

[~~(6)~~] (5) "Test" or "testing" means a test or tests for HIV infection in accordance with standards recommended by the Department of Health.

Section 3. Section 76-10-1312 is amended to read:

76-10-1312. Notice to offender of HIV positive test results.

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person [~~at the sentencing hearing in the presence of the judge and counsel only.~~] by:

[~~(2) Whenever practicable, prior to notification in the district court, the offender shall be served personally with written notice by the local law enforcement agency at a meeting with a local law enforcement officer and a person from the state or county health department.~~]

[~~(a) At that meeting, the offender shall be informed of the test results and counseled on HIV infection and its effects.~~]

[~~(b) The local law enforcement agency shall arrange the time and place of notification and counseling.~~]

(a) the local law enforcement agency;

(b) the Department of Corrections, for offenders confined in any state prison;

(c) the state Department of Health; or

(d) an authorized representative of any of the agencies listed in this Subsection (1).

[~~(3)~~] (2) The notice under Subsection (1) shall contain [~~the following information~~] the signature of the HIV positive person, indicating the person's receipt of the notice, the name and signature of the person providing the notice, and:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and [~~receiving actual notice and personal written notice of the positive test results shall be~~] either had actual knowledge that the person is an HIV positive individual or the person has previously been convicted of any of the criminal offenses listed above is guilty of a third degree felony [~~of the third degree pursuant to~~] under Section 76-10-1309."

(3) Failure to provide this notice, or to provide the notice in the manner or form prescribed under this section, does not create any civil liability and does not create a defense to any prosecution under this part.

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

CHAPTER 71
S. B. 61
Passed February 28, 2011
Approved March 18, 2011
Effective May 10, 2011

EDUCATION FOR PRESCRIBING CONTROLLED SUBSTANCES

Chief Sponsor: Patricia W. Jones
House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill amends provisions of the Utah Controlled Substances Act.

Highlighted Provisions:

This bill:

- requires a prescriber applying for a new or renewed controlled substance license to take four hours of controlled substance prescribing classes each licensing period;
- requires the Division of Occupations and Professional Licensing, in consultation with the Utah Medical Association and the applicable practitioner licensing boards, to establish educational content of controlled substance prescribing classes to help establish safe and effective practices for prescribing controlled substances, which may include opioid narcotics, hypnotic depressants, and psychostimulants;
- provides that any controlled substance prescribing class required under this bill does not increase the total continuing professional education requirements for prescriber licensing; and
- allows the division to establish rules.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

58-37-6.5, Utah Code Annotated 1953

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

Section 1. Section 58-37-6.5 is enacted to read:

58-37-6.5. Continuing professional education for controlled substance prescribers.

(1) (a) Beginning on July 1, 2012, each individual, other than a veterinarian, who has a license to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act, shall complete at least four continuing professional education hours in approved controlled substance prescribing classes per licensing period.

(b) Any controlled substance prescribing class under this section shall:

(i) qualify for the AMA PRA Category 1 Credit;

(ii) be presented by an organization accredited to provide continuing medical education by:

(A) the Accreditation Council for Continuing Medical Education;

(B) the Utah Medical Association; or

(C) another recognized state continuing medical education accrediting body; and

(iii) be approved by:

(A) the recognized state continuing medical education accrediting body; and

(B) the division.

(2) The division, by rule and in consultation with the applicable practitioner licensing boards and the recognized state continuing medical education accrediting body, shall establish educational content for any controlled substance prescribing class under this section. The content shall include materials such as:

(a) use of the state controlled substance database;

(b) specific pharmacology;

(c) abuse, dependence, and addictive properties and toxicity of certain controlled substances, which may include opioid narcotics, hypnotic depressants, and psychostimulants; and

(d) other applicable content as determined by the division and established by rule.

(3) A controlled substance prescribing class required under this section:

(a) may be held:

(i) in conjunction with other continuing professional education programs; and

(ii) online;

(b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing; and

(c) shall be reported by an individual as part of the continuing professional education required for licensing.

(4) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

CHAPTER 72
S. B. 92
Passed February 25, 2011
Approved March 18, 2011
Effective May 10, 2011

PRIVATE SECURITY SERVICES

Chief Sponsor: Margaret Dayton
House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill modifies the Security Personnel and Licensing Act and the Public Safety Code regarding peace officers.

Highlighted Provisions:

This bill:

- requires that law enforcement agencies establish a written policy regarding peace officers working as security officers while off-duty including the issue of financial responsibility;
- requires that law enforcement agencies provide written authorization for a peace officer to work while off-duty as a security officer; and
- requires that the employer of the off-duty officer comply with state and federal income reporting and withholding requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-63-304, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

53-13-114, Utah Code Annotated 1953

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

Section 1. Section 53-13-114 is enacted to read:

53-13-114. Off-duty peace officer working as a security officer.

A peace officer may engage in off-duty employment as a security officer under Section 58-63-304 only if:

(1) the law enforcement agency employing the peace officer has a written policy regarding peace officer employees working while off-duty as security officers;

(2) the agency's chief administrative officer, or that officer's designee, provides written authorization for an off-duty peace officer to work as a security officer; and

(3) the business or entity employing the off-duty peace officer to work as a security officer complies with state and federal income reporting and withholding requirements regarding the off-duty officer's wages.

Section 2. Section 58-63-304 is amended to read:

58-63-304. Exemptions from licensure.

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

(a) a peace officer employed by or licensed as a contract security company, as provided in Subsection (2); and

(b) a person employed by a contract security company for the sole purpose of operating or staffing security apparatus, including a magnetometer, magnetometer wand, x-ray viewing device, or other device approved by rule of the division.

(2) A peace officer may only engage in off-duty employment as a security officer if:

(a) the law enforcement agency employing the peace officer has a written policy regarding peace officer employees working while off-duty as a security officer and the policy shall address the issue of financial responsibility;

(b) the agency's chief administrative officer, or that officer's designee, provides written authorization for an off-duty peace officer to work as a security officer; and

(c) the business or entity employing the off-duty peace officer to work as a security officer complies with state and federal income reporting and withholding requirements regarding the off-duty officer's wages.

[~~(2)~~] (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules approving security apparatus under Subsection (1)(b).

CHAPTER 73
S. B. 97
Passed March 9, 2011
Approved March 18, 2011
Effective March 18, 2011

HIGHER EDUCATION MISSION BASED FUNDING

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies provisions of the State System of Higher Education code relating to higher education appropriations.

Highlighted Provisions:

This bill:

- requires the State Board of Regents to include the mission of each institution in the master plan for higher education;
- modifies higher education appropriations provisions, including:
  - specifying the required components of the board's combined budget recommendation;
  - establishing mission based funding; and
  - requiring reporting to the Higher Education Appropriations Subcommittee on the use of the previous year's mission based funding;
- requires the president of each institution of higher education to:
  - establish institutional initiatives each year aligned with the board's strategic priorities; and
  - allocate mission based funding to each initiative; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

53B-6-101, as last amended by Laws of Utah 2009, Chapter 346
53B-7-101, as enacted by Laws of Utah 1987, Chapter 167

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

Section 1. Section 53B-6-101 is amended to read:

53B-6-101. Additional responsibilities of the board -- Studies and evaluations -- Master plan for higher education -- Productivity -- Institutional student assessment -- Biennial accountability report to the Legislature.

(1) The board shall conduct continuing studies and evaluations of the facilities, grounds, buildings, and equipment at the higher education institutions under its jurisdiction and use space utilization and other studies conducted by the State Building Board.

(2) The board shall establish and maintain an up-to-date master plan which shall include:

(a) providing for statewide planning of public higher education in terms of a mission, aims, purposes, and objectives of the system as a whole;

(b) establishing and defining the mission, role, and programs of each institution within the system;

(c) establishing criteria for and determination of the future needs and requirements for new programs and new institutions and the elimination, curtailment, or consolidation of existing programs and facilities;

(d) providing for the initiation and financing of projects as considered necessary to meet and satisfy the projected patterns of growth and maintenance;

(e) establishing criteria for and determination of the operating and capital budgetary needs of each institution and the system as a whole;

(f) recommending the methods and sources of future financial support of the higher education system;

(g) establishing procedures for the development of maximum utilization of existing facilities as suggested by space utilization studies conducted by the State Building Board; and

(h) securing an adequate and coordinated program for the community colleges and career and technical education programs in the institutions and departments in the state system of higher education.

(3) (a) The board may do all things necessary for the effective implementation of the statewide master plan as adopted and revised by the board from time to time.

(b) The State Board of Education and the Utah College of Applied Technology shall provide career and technical education staff assistance to the State Board of Regents in support of master planning activities related to career and technical education in higher education.

(4) (a) The board shall adopt rules and initiate programs to promote and increase productivity in the state system of higher education.

(b) The board shall require each college and university in the system to establish multiple measures of institutional and student assessment in order to improve student instruction, academic programs, and learning opportunities.

(c) The board shall submit a biennial accountability report to the Legislature, which shall include such factors as:

(i) space utilization, faculty productivity, and other similar measures of the management of institutional resources at each institution; and

(ii) student assessment at entry to each institution, at critical midway points, and at exit.

(d) The board shall establish a systemwide committee to address assessment and accountability issues and propose essential elements to be included in the biennial report.

Section 2. Section 53B-7-101 is amended to read:

53B-7-101. Combined requests for appropriations -- Board review of operating budgets -- Submission of budgets -- Recommendations -- Hearing request -- Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.

(1) (a) The board shall recommend a combined appropriation for the operating budgets of higher education institutions for inclusion in [~~the~~] a state appropriations act.

(b) The board's combined budget recommendation shall include:

(i) employee compensation;

(ii) mandatory costs, including building operations and maintenance, fuel, and power;

(iii) mission based funding described in Subsection (2);

(iv) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and

(v) unfunded historic growth.

(c) The board's recommendations shall be available for presentation to the governor and to the Legislature at least 30 days prior to the convening of the Legislature, and shall include schedules showing the recommended amounts for each institution, including separately funded programs or divisions.

(d) The recommended appropriations shall be determined by the board only after it has reviewed the proposed institutional operating budgets, and has consulted with the various institutions and board staff in order to make appropriate adjustments.

(2) (a) The board shall establish mission based funding.

(b) Mission based funding shall include:

(i) enrollment growth; and

(ii) up to three strategic priorities.

(c) The strategic priorities described in Subsection (2)(b)(ii) shall be:

(i) approved by the board; and

(ii) designed to improve the availability, effectiveness, or quality of higher education in the state.

(d) When recommending an allocation of mission based funding to a doctorate-granting university, as defined by the board, or Southern Utah University, the board shall place greater emphasis on the university's fulfillment of the strategic priorities described in Subsection (2)(b)(ii).

(e) Notwithstanding Subsection (2)(d), the board may allocate funding for a modest amount of growth to doctorate-granting institutions and Southern Utah University.

(f) Concurrent with recommending mission based funding, the board shall also recommend to the Legislature ways to address funding any inequities for institutions as compared to institutions with similar missions.

[~~(2)~~] (3) (a) Institutional operating budgets shall be submitted to the board at least 90 days prior to the convening of the Legislature in accordance with procedures established by the board.

(b) Funding requests pertaining to capital facilities and land purchases shall be submitted in accordance with procedures prescribed by the State Building Board.

[~~(3)~~] (4) (a) The budget recommendations of the board shall be accompanied by full explanations and supporting data.

(b) The appropriations recommended by the board shall be made with the dual objective of:

[~~(a)~~] (i) justifying for higher educational institutions appropriations consistent with their needs, and consistent with the financial ability of the state; and

[~~(b)~~] (ii) determining an equitable distribution of funds among the respective institutions in accordance with the aims and objectives of the statewide master plan for higher education.

[~~(4)~~] (5) (a) The board shall request a hearing with the governor on the recommended appropriations.

(b) After the governor delivers his budget message to the Legislature, the board shall request hearings on the recommended appropriations with the appropriate committees of the Legislature.

(c) If either the total amount of the state appropriations or its allocation among the institutions as proposed by the Legislature or its committees is substantially different from the recommendations of the board, the board may request further hearings with the Legislature or its appropriate committees to reconsider both the total amount and the allocation.

[~~(5)~~] (6) The board may devise, establish, periodically review, and revise formulas for its use and for the use of the governor and the committees of the Legislature in making appropriation recommendations.

[~~(6)~~] (7) (a) The board shall recommend to each session of the Legislature the minimum tuitions, resident and nonresident, for each institution which it considers necessary to implement the budget recommendations.

(b) The board may fix the tuition, fees, and charges for each institution at levels it finds necessary to meet budget requirements.

[~~(7)~~] (8) (a) Money allocated to each institution by legislative appropriation may be budgeted in

accordance with institutional work programs approved by the board, provided that the expenditures funded by appropriations for each institution are kept within the appropriations for the applicable period.

(b) A president shall:

(i) establish initiatives for the president's institution each year that are:

(A) aligned with the strategic priorities described in Subsection (2); and

(B) consistent with the institution's mission and role; and

(ii) allocate the institution's mission based funding to the initiatives.

[~~(8)~~] (9) The dedicated credits, including revenues derived from tuitions, fees, federal grants, and proceeds from sales received by the institutions are appropriated to the respective institutions and used in accordance with institutional work programs.

[~~(9)~~] (10) Each institution may do its own purchasing, issue its own payrolls, and handle its own financial affairs under the general supervision of the board.

(11) (a) If the Legislature appropriates money in accordance with this section, it shall be distributed to the State Board of Regents and higher education institutions to fund the items described in Subsection (1)(b).

(b) During each general session of the Legislature following a fiscal year in which the Legislature provides an appropriation for mission based funding, the board and institutions shall report to the Legislature's Higher Education Appropriations Subcommittee on the use of the previous year's mission based funding, including performance outcomes relating to the strategic initiatives approved by the board.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 74
S. B. 113
Passed March 9, 2011
Approved March 18, 2011
Effective March 18, 2011

ELECTION DISTRICT BOUNDARIES

Chief Sponsor: John L. Valentine
House Sponsor: John Dougall
Cosponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the boundaries of certain United States House of Representatives districts, State Senate districts, and State House districts and establishes certain review and evaluation requirements for the lieutenant governor, the Automated Geographic Reference Center, and county clerks.

Highlighted Provisions:

This bill:

- modifies a portion of the common boundary between United States House of Representatives District 2 and District 3;
- modifies a portion of the common boundary between Senate District 11 and Senate District 14;
- modifies a portion of the common boundary between House District 27 and House District 57;
- establishes requirements for county clerks to submit certain maps and data to the lieutenant governor for review and evaluation;
- requires the Automated Geographic Reference Center to compare certain maps and data submitted by the county clerks with boundaries of Congressional, State School Board, Senate, and House districts as established by the Legislature's official maps; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

20A-13-101 (Contingently Superseded), as repealed and reenacted by Laws of Utah 2001, Second Special Session, Chapter 6
20A-13-102, as repealed and reenacted by Laws of Utah 2001, Second Special Session, Chapter 6
20A-14-102, as repealed and reenacted by Laws of Utah 2001, Second Special Session, Chapter 2
36-1-101, as last amended by Laws of Utah 2006, Chapter 12
36-1-103, as last amended by Laws of Utah 2006, Chapter 12
36-1-201, as last amended by Laws of Utah 2006, Chapter 12
36-1-202, as last amended by Laws of Utah 2006, Chapter 12

ENACTS:

20A-13-102.2, Utah Code Annotated 1953
20A-14-102.3, Utah Code Annotated 1953
36-1-103.2, Utah Code Annotated 1953
36-1-202.2, Utah Code Annotated 1953

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

Section 1. Section 20A-13-101 (Contingently Superseded) is amended to read:

20A-13-101 (Contingently Superseded). Representatives to the United States Congress -- Three representative districts -- When elected -- District boundaries.

(1) (a) The state of Utah is divided into three districts for the election of representatives to the Congress of the United States, with one member to be elected from each Congressional district.

(b) At the general election to be held in 2002, and biennially thereafter, one representative from each Congressional district shall be elected to serve in the Congress of the United States.

(2) (a) The Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2000 national decennial census as the official data for establishing Congressional district boundaries.

(b) ~~[The]~~ Except as provided in Subsection (3), the numbers and boundaries of the Congressional districts are designated and established by the maps attached to the bill that enacts this section.

(3) The following census blocks from the 2000 census are removed from Congressional District 2 and placed into Congressional District 3: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

Section 2. Section 20A-13-102 is amended to read:

20A-13-102. Official maps of Congressional districts.

(1) (a) The Legislature shall file copies of the official maps enacted by the Legislature, and any other relevant materials, with the lieutenant governor's office.

(b) ~~[The]~~ Except as provided in Subsection (2), the legal boundaries of Utah's Congressional districts are contained in the official maps on file with the lieutenant governor's office.

(2) The following census blocks from the 2000 census are removed from Congressional District 2 and placed into Congressional District 3: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

[~~(2)~~] (3) When questions of interpretation of Congressional district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the Congressional district boundaries.

[~~(3) (a) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.~~]

[~~(b) Each county clerk shall establish voting precincts and polling places within each Congressional district according to the procedures and requirements of Section 20A-5-303.~~]

(4) Maps identifying the boundaries for Congressional districts may be viewed on the Internet at the lieutenant governor's website.

Section 3. Section 20A-13-102.2 is enacted to read:

20A-13-102.2. County clerk, Automated Geographic Reference Center, and lieutenant governor responsibilities -- Maps and voting precinct boundaries.

(1) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.

(2) (a) A county clerk may create one or more county maps that identify the boundaries of Utah's Congressional districts as shown on the official maps.

(b) Before publishing or distributing any map or data created by the county clerk that identifies the boundaries of Utah's Congressional districts within the county, the county clerk shall submit the map and data to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map and data from a county clerk, the Automated Geographic Reference Center shall:

(i) review the map and data to evaluate if the county map and data accurately reflect the boundaries of Utah's Congressional districts established by the Legislature in the official maps;

(ii) determine whether the map and data are correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map and data are correct or notify the county clerk that the map and data are incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map and data submitted are incorrect, the county clerk shall:

(i) make the corrections necessary to conform the map and data to the official maps; and

(ii) resubmit the corrected map and data to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (2).

(3) (a) Subject to the requirements of this Subsection (3), each county clerk shall establish voting precincts and polling places within each Utah Congressional district according to the procedures and requirements of Section 20A-5-303.

(b) Within five working days after approval of voting precincts and polling places by the county legislative body as required by Section 20A-5-303, each county clerk shall submit a voting precinct map identifying the boundaries of each voting precinct within the county to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map from a county clerk, the Automated Geographic Reference Center shall:

(i) review the voting precinct map to evaluate if the county map accurately reflects the boundaries of Utah's Congressional districts established by the Legislature in the official maps;

(ii) determine whether the map is correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map is correct or notify the county clerk that the map is incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map is incorrect, the county clerk shall:

(i) make the corrections necessary to conform the voting precinct map to the official maps; and

(ii) resubmit the corrected map to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (3).

Section 4. Section 20A-14-102 is amended to read:

20A-14-102. Official maps of state board districts.

(1) (a) The Legislature shall file copies of the official maps enacted by the Legislature with the lieutenant governor's office.

(b) The legal boundaries of State Board of Education districts are contained in the official maps on file with the lieutenant governor's office.

(2) When questions of interpretation of state board district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the state board district boundaries.

[~~(3) (a) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.~~]

[~~(b) Each county clerk shall establish voting precincts and polling places within each state board district according to the procedures and requirements of Section 20A-5-303.~~]

[~~(4)~~] (3) Maps identifying the boundaries for state board districts may be viewed on the Internet at the lieutenant governor's website.

Section 5. Section 20A-14-102.3 is enacted to read:

20A-14-102.3. County clerk, Automated Geographic Reference Center, and lieutenant governor responsibilities -- Maps and voting precinct boundaries.

(1) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.

(2) (a) A county clerk may create one or more county maps that identify the boundaries of state board districts as shown on the official maps.

(b) Before publishing or distributing any map or data created by the county clerk that identifies the boundaries of state board districts within the county, the clerk shall submit the map and data to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map and data from a county clerk, the Automated Geographic Reference Center shall:

(i) review the map and data to evaluate if the county map and data accurately reflect the boundaries of state board districts established by the Legislature in the official maps;

(ii) determine whether the map and data are correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map and data are correct or inform the county clerk that the map and data are incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map and data submitted are incorrect, the county clerk shall:

(i) make the corrections necessary to conform the map and data to the official maps; and

(ii) resubmit the corrected map and data to the lieutenant governor for a new review under this Subsection (2).

(3) (a) Subject to the requirements of this Subsection (3), each county clerk shall establish voting precincts and polling places within each state board district according to the procedures and requirements of Section 20A-5-303.

(b) Within five working days after approval of voting precincts and polling places by the county legislative body as required by Section 20A-5-303, each county clerk shall submit a voting precinct map identifying the boundaries of each voting precinct within the county to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map from a county clerk, the Automated Geographic Reference Center shall:

(i) review the voting precinct map to evaluate if the county map accurately reflects the boundaries of state board districts established by the Legislature in the official maps;

(ii) determine whether the map is correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map is correct or notify the county clerk that the map is incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map is incorrect, the county clerk shall:

(i) make the corrections necessary to conform the voting precinct map to the official maps; and

(ii) resubmit the corrected map to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (3).

Section 6. Section 36-1-101 is amended to read:

36-1-101. Utah State Senate -- District boundaries.

(1) As used in this chapter:

(a) "New county boundary" means the adjusted common boundary between Salt Lake County and Utah County as certified by the lieutenant governor on December 29, 2005.

(b) "Old county boundary" means the common boundary between Salt Lake County and Utah County before the boundary change certified by the lieutenant governor on December 29, 2005.

(c) "Southwestern intersection" means the western-most three way intersection of the old county boundary, the new county boundary, and the boundary separating Senate District 9 and Senate District 11.

(2) The Utah State Senate shall consist of 29 members, with one member to be elected from each Utah State Senate district.

(3) (a) The Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2000 national decennial census as the official data for establishing Senate district boundaries.

(b) Except as provided in Subsection (4), the numbers and boundaries of the Senate districts are designated and established by the maps attached to the bill that enacts this section.

(4) (a) Because of the new county boundary separating Salt Lake County and Utah County, the boundary separating Senate District 9 and Senate District 11 that followed the old county boundary is changed to follow the new county boundary eastward from the southwestern intersection to the point where the existing boundary of Senate District 9 turns north from the old county boundary.

(b) The following census blocks from the 2000 census are removed from Senate District 11 and placed into Senate District 14: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

Section 7. Section 36-1-103 is amended to read:

36-1-103. Official maps of Senate districts.

(1) (a) The Legislature shall file copies of the official maps enacted by the Legislature, and any other relevant data, with the lieutenant governor's office.

(b) Except as provided in Subsection (2), the legal boundaries of Senate districts are contained in the official maps on file with the lieutenant governor's office.

(2) (a) Because of the new county boundary separating Salt Lake County and Utah County, the boundary separating Senate District 9 and Senate District 11 that followed the old county boundary is changed to follow the new county boundary eastward from the southwestern intersection to the point where the existing boundary of Senate District 9 turns north from the old county boundary.

(b) The following census blocks from the 2000 census are removed from Senate District 11 and placed into Senate District 14: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

(3) When questions of interpretation of Senate district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the Senate district boundaries.

[~~(4) (a) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.~~]

[~~(b) Each county clerk shall establish voting precincts and polling places within each Senate district according to the procedures and requirements of Section 20A-5-303.~~]

[~~(5)~~] (4) Maps identifying the boundaries for Senate districts may be viewed on the Internet at the lieutenant governor's website.

Section 8. Section 36-1-103.2 is enacted to read:

36-1-103.2. County clerk, Automated Geographic Reference Center, and lieutenant governor responsibilities -- Maps and voting precinct boundaries.

(1) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.

(2) (a) A county clerk may create one or more county maps that identify the boundaries of Senate districts as shown on the official maps.

(b) Before publishing or distributing any map or data created by the county clerk that identifies the boundaries of Senate districts within the county, the clerk shall submit the map and data to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map and data from a county clerk, the Automated Geographic Reference Center shall:

(i) review the map and data to evaluate if the county map and data accurately reflect the boundaries of Senate districts established by the Legislature in the official maps;

(ii) determine whether the map and data are correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map and data are correct or notify the county clerk that the map and data are incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map and data submitted are incorrect, the county clerk shall:

(i) make the corrections necessary to conform the map and data to the official maps; and

(ii) resubmit the corrected map and data to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (2).

(3) (a) Subject to the requirements of this Subsection (3), each county clerk shall establish voting precincts and polling places within each Senate district according to the procedures and requirements of Section 20A-5-303.

(b) Within five working days after approval of voting precincts and polling places by the county legislative body as required by Section 20A-5-303, each county clerk shall submit a voting precinct map identifying the boundaries of each voting precinct within the county to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map from a county clerk, the Automated Geographic Reference Center shall:

(i) review the voting precinct map to evaluate if the county map accurately reflects the boundaries of Senate districts established by the Legislature in the official maps;

(ii) determine whether the map is correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map is correct or notify the county clerk that the map is incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map is incorrect, the county clerk shall:

(i) make the corrections necessary to conform the voting precinct map to the official maps; and

(ii) resubmit the corrected map to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (3).

Section 9. Section 36-1-201 is amended to read:

36-1-201. Utah House of Representatives -- District boundaries.

(1) The Utah House of Representatives shall consist of 75 members, with one member to be elected from each Utah House of Representatives district.

(2) (a) The Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2000 national decennial census as the official data for establishing House district boundaries.

(b) Except as provided in Subsection (3), the numbers and boundaries of the House districts are designated and established by the maps attached to the bill that enacts this section.

(3) (a) Because of the new county boundary separating Salt Lake County and Utah County, the boundary separating House District 51 and House District 27 that follows the old county boundary is changed to follow the new county boundary.

(b) The following census blocks from the 2000 census are removed from House District 27 and placed into House District 57: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

Section 10. Section 36-1-202 is amended to read:

36-1-202. Official maps of House districts.

(1) (a) The Legislature shall file copies of the official maps enacted by the Legislature, and any other relevant materials, with the lieutenant governor's office.

(b) Except as provided in Subsection (2), the legal boundaries of House districts are contained in the official maps on file with the lieutenant governor's office.

(2) (a) Because of the new county boundary separating Salt Lake County and Utah County, the boundary separating House District 51 and House District 27 that follows the old county boundary is changed to follow the new county boundary.

(b) The following census blocks from the 2000 census are removed from House District 27 and placed into House District 57: Census Tract 010205, Blocks 1000, 1001, 3001, 3003, and 3004.

(3) When questions of interpretation of House district boundaries arise, the official maps on file in the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the House district boundaries.

[~~(4) (a) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.~~]

[~~(b) Each county clerk shall establish voting precincts and polling places within each House district according to the procedures and requirements of Section 20A-5-303.~~]

[~~(5)~~] (4) Maps identifying the boundaries for House districts may be viewed on the Internet at the lieutenant governor's website.

Section 11. Section 36-1-202.2 is enacted to read:

36-1-202.2. County clerk, Automated Geographic Reference Center, and lieutenant governor responsibilities -- Maps and voting precinct boundaries.

(1) Each county clerk shall obtain copies of the official maps for the clerk's county from the lieutenant governor's office.

(2) (a) A county clerk may create one or more county maps that identify the boundaries of House districts as shown on the official maps.

(b) Before publishing or distributing any map or data created by the county clerk that identifies the boundaries of House districts within the county, the clerk shall submit the map and data to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map and data from a county clerk, the Automated Geographic Reference Center shall:

(i) review the map and data to evaluate if the county map and data accurately reflect the boundaries of House districts established by the Legislature in the official maps;

(ii) determine whether the map and data are correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map and data are correct or notify the county clerk that the map and data are incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map and data submitted are incorrect, the county clerk shall:

(i) make the corrections necessary to conform the map and data to the official maps; and

(ii) resubmit the corrected map and data to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (2).

(3) (a) Subject to the requirements of this Subsection (3), each county clerk shall establish voting precincts and polling places within each House district according to the procedures and requirements of Section 20A-5-303.

(b) Within five working days after approval of voting precincts and polling places by the county legislative body as required by Section 20A-5-303, each county clerk shall submit a voting precinct map identifying the boundaries of each voting

precinct within the county to the lieutenant governor and to the Automated Geographic Reference Center for review.

(c) Within 30 days after receipt of a map from a county clerk, the Automated Geographic Reference Center shall:

(i) review the voting precinct map to evaluate if the county map accurately reflects the boundaries of House districts established by the Legislature in the official maps;

(ii) determine whether the map is correct or incorrect; and

(iii) communicate those findings to the lieutenant governor.

(d) The lieutenant governor shall either notify the county clerk that the map is correct or notify the county clerk that the map is incorrect.

(e) If the county clerk receives notice from the lieutenant governor that the map is incorrect, the county clerk shall:

(i) make the corrections necessary to conform the voting precinct map to the official maps; and

(ii) resubmit the corrected map to the lieutenant governor and to the Automated Geographic Reference Center for a new review under this Subsection (3).

Section 12. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 75
S. B. 114
Passed February 16, 2011
Approved March 18, 2011
Effective May 10, 2011

MUNICIPAL PROSECUTORIAL DISCRETION

Chief Sponsor: Daniel W. Thatcher
House Sponsor: Christopher N. Herrod

LONG TITLE

General Description:

This bill modifies the Municipal Code relating to the duties of a city attorney.

Highlighted Provisions:

This bill:

- permits a city attorney who has a conflict of interest in a prosecution matter to appoint a city attorney from another municipality or a public prosecutor to prosecute in the court having jurisdiction over the matter.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-928, as last amended by Laws of Utah 2002, Chapter 130

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

Section 1. Section 10-3-928 is amended to read:

10-3-928. Attorney duties -- Deputy public prosecutor.

In cities with a city attorney, the city attorney:

(1) may prosecute violations of city ordinances[~~:~~];

(2) may prosecute, under state law, infractions and misdemeanors occurring within the boundaries of the municipality;

(3) has the same powers in respect to violations as are exercised by a county attorney or district attorney, except that a city attorney's authority to grant immunity shall be limited to:

(a) granting transactional immunity for violations of city ordinances; and

(b) granting transactional immunity under state law for infractions and misdemeanors occurring within the boundaries of the municipality;

(4) shall represent the interests of the state or the municipality in the appeal of any matter prosecuted in any trial court by the city attorney; [~~and~~]

(5) may cooperate with the Office of the Attorney General during investigations, including those described in Subsection 67-5-18(3)(f)[~~.~~]; and

(6) may designate a city attorney from another municipality or a public prosecutor to prosecute a matter, in the court having jurisdiction over the matter, if the city attorney has a conflict of interest regarding the matter being prosecuted.

CHAPTER 76
S. B. 128
Passed February 28, 2011
Approved March 18, 2011
Effective May 10, 2011

REGULATORY AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends the Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions related to exemptions from licensure;
- exempts advanced practice registered nurses and physician assistants from licensure under the Pharmacy Practice Act to dispense a cosmetic drug or injectable weight loss drug to a patient; and
- exempts optometrists from licensure under the Pharmacy Practice Act to dispense a cosmetic drug to a patient.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-17b-309, as last amended by Laws of Utah 2010, Chapter 213

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

Section 1. Section 58-17b-309 is amended to read:

58-17b-309. Exemptions from licensure.

(1) For purposes of this section:

(a) "Cosmetic drug":

(i) means a prescription drug that is:

(A) for the purpose of promoting attractiveness or altering the appearance of an individual; and

(B) listed as a cosmetic drug subject to the exemption under this section by the division by administrative rule; and

(ii) does not include a prescription drug that is:

(A) a controlled substance;

(B) compounded by the physician; or

(C) prescribed or used for the patient for the purpose of diagnosing, curing, mitigating, treating, or preventing a disease.

(b) "Injectable weight loss drug":

(i) means an injectable prescription drug:

(A) prescribed to promote weight loss; and

(B) listed as an injectable prescription drug subject to exemption under this section by the division by administrative rule; and

(ii) does not include a prescription drug that is a controlled substance.

(c) [~~"Physician"~~] "Prescribing practitioner" means an individual licensed under [~~either~~]:

(i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with prescriptive practice;

(ii) Chapter 67, Utah Medical Practice Act[~~, or~~];

(iii) Chapter 68, Utah Osteopathic Medical Practice Act[~~.~~]; or

(iv) Chapter 70a, Physician Assistant Act.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the acts or practices described in this [~~Subsection (2)~~] section without being licensed under this chapter:

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

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

(c) a [~~physician~~] prescribing practitioner who prescribes and dispenses a cosmetic drug or an injectable weight loss drug to the [~~physician's~~] prescribing practitioner's patient in accordance with Subsection (4)[~~.~~]; and

(d) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic drug to the optometrist's patient in accordance with Subsection (4).

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

(4) A [~~physician~~] prescribing practitioner or optometrist is exempt from licensing under the provisions of [~~Subsection (2)(c)~~] this part if the [~~physician~~] prescribing practitioner or optometrist:

(a) (i) writes a prescription for a [~~cosmetic drug or injectable weight loss~~] drug the prescribing practitioner or optometrist has the authority to dispense under Subsection (4)(b); and

(ii) informs the patient:

(A) that the prescription may be filled at a pharmacy or dispensed in the [~~physician's~~] prescribing practitioner's or optometrist's office;

(B) of the directions for appropriate use of the drug;

(C) of potential side-effects to the use of the drug; and

(D) how to contact the [~~physician~~] prescribing practitioner or optometrist if the patient has questions or concerns regarding the drug;

(b) dispenses a cosmetic drug or injectable weight loss drug only to the [~~physician's~~] prescribing practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's patients; and

(c) follows labeling, record keeping, patient counseling, and storage requirements established by administrative rule adopted by the division in consultation with the boards listed in Subsection (5)(a).

(5) (a) The division, in consultation with the board under this chapter, the Physician Licensing Board, [~~and~~] the Osteopathic Physician Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing, and the Optometrist Licensing Board shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to designate:

(i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug under this section; and

(ii) the requirements under Subsection (4)(c).

(b) When making a determination under Subsection (1)(a), the division and boards listed in Subsection (5)(a), may consider any federal Food and Drug Administration indications or approval associated with a drug when adopting a rule to designate a prescription drug that may be dispensed under this section.

(c) The division may inspect the office of a [~~physician~~] prescribing practitioner or optometrist who is dispensing under the provisions of this section, in order to determine whether the [~~physician~~] prescribing practitioner or optometrist is in compliance with the provisions of this section. If a [~~physician~~] prescribing practitioner or optometrist chooses to dispense under the provisions of this section, the [~~physician~~] prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the [~~physician's~~] prescribing practitioner's or optometrist's office and determine if the provisions of this section are being met by the [~~physician~~] prescribing practitioner and optometrist.

(d) If a [~~physician~~] prescribing practitioner or optometrist violates a provision of this section, the [~~physician~~] prescribing practitioner or optometrist may be subject to discipline under:

(i) this chapter; and

(ii) (A) Chapter 16a, Utah Optometry Practice Act;

(B) Chapter 31b, Nurse Practice Act;

[~~(ii) (A)~~] (C) Chapter 67, Utah Medical Practice Act; [~~or~~]

[~~(B)~~] (D) Chapter 68, Utah Osteopathic Medical Practice Act[~~.~~]; or

(E) Chapter 70a, Physician Assistant Act.

(6) [~~This~~] Except as provided in Subsection (2)(d), this section does not restrict or limit the scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah Optometry Practice Act.

CHAPTER 77
S. B. 135
Passed February 23, 2011
Approved March 18, 2011
Effective May 10, 2011

DEPARTMENT OF PUBLIC SAFETY DUTIES AMENDMENTS

Chief Sponsor: Daniel W. Thatcher
House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies the Public Safety Code regarding language affected by the previous repeal of another provision.

Highlighted Provisions:

This bill:

- removes from the duties of the Department of Public Safety the requirement that it maintain a database of officers' checks of driver licenses and state identification cards that includes the name, race, and gender of the officer and the race of the person whose license or card is checked, because language in Section 53-3-205 that required an applicant to provide information regarding race expired July 1, 2007.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-1-106, as last amended by Laws of Utah 2009, Chapter 183

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

Section 1. Section 53-1-106 is amended to read:

53-1-106. Department duties -- Powers.

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6a, Traffic Code, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6a-1406; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6a-1304;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking;

(d) meet with the Department of Technology Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations;

(e) provide assistance to the Crime Victim Reparations Board and Office of Crime Victim Reparations in conducting research or monitoring victims' programs, as required by Section 63M-7-505;

(f) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association;

(g) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63K-3-301; and

(h) implement the provisions of Section 53-2-202, the Emergency Management Assistance Compact[~~; and~~].

[~~(i) (i) maintain a database of the information listed below regarding each driver license or state identification card status check made by a law enforcement officer:~~]

[~~(A) the agency employing the law enforcement officer;~~]

[~~(B) the name of the law enforcement officer or the identifying number the agency has assigned to the law enforcement officer;~~]

[~~(C) the race and gender of the law enforcement officer;~~]

[~~(D) the purpose of the law enforcement officer's status check, including but not limited to a traffic stop or a pedestrian stop; and~~]

[~~(E) the race of the individual regarding whom the status check is made, based on the information provided through the application process under Section 53-3-205 or 53-3-804;~~]

[~~(ii) provide access to the database created in Subsection (1)(i)(i) to the Commission on Criminal and Juvenile Justice for the purpose of:~~]

[~~(A) evaluating the data;~~]

[~~(B) evaluating the effectiveness of the data collection process; and~~]

[~~(C) reporting and making recommendations to the Legislature; and~~]

[~~(iii) classify any personal identifying information of any individual, including law enforcement officers, in the database as protected records under Subsection 63G-2-305(9).~~]

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63J-1-504.

(3) The department may establish or contract for the establishment of an Organ Procurement Donor Registry in accordance with Section 26-28-120.

CHAPTER 78
S. B. 141
Passed March 3, 2011
Approved March 18, 2011
Effective May 10, 2011

BURGLARY OFFENSE AMENDMENTS

Chief Sponsor: Mark B. Madsen
House Sponsor: Holly J. Richardson

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding elements of the offense of burglary.

Highlighted Provisions:

This bill:

- provides that the offense of burglary includes a person entering a building with the intent to commit any act of voyeurism, rather than the current element of intent to commit an act of voyeurism against a child younger than 14 years of age.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-6-202, as last amended by Laws of Utah 2003, Chapter 325

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

Section 1. Section 76-6-202 is amended to read:

76-6-202. Burglary.

(1) An actor is guilty of burglary [~~if he~~] who enters or remains unlawfully in a building or any portion of a building with intent to commit:

(a) a felony;

(b) theft;

(c) an assault on any person;

(d) lewdness, a violation of Subsection 76-9-702(1);

(e) sexual battery, a violation of Subsection 76-9-702(3);

(f) lewdness involving a child, in violation of Section 76-9-702.5; or

(g) voyeurism [~~against a child~~] under [~~Subsection~~] Section 76-9-702.7[~~(2) or (5)~~].

(2) Burglary is a third degree felony [~~of the third degree~~] unless it was committed in a dwelling, in which event it is a second degree felony [~~of the second degree~~].

(3) A violation of this section is a separate offense from any of the offenses listed in Subsections (1)(a) through (g), and which may be committed by the actor while [~~he is~~] in the building.

CHAPTER 79
S. B. 200
Passed March 4, 2011
Approved March 18, 2011
Effective May 10, 2011

STATE DEBT COLLECTIONS AMENDMENTS

Chief Sponsor: Lyle W. Hillyard
House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill modifies provisions relating to the Office of State Debt Collection and the Division of Finance.

Highlighted Provisions:

This bill:

- modifies definitions;
- moves the Office of State Debt Collection from the Department of Administrative Services to the Division of Finance;
- modifies procedures for the collection of accounts receivable by the Division of Finance;
- requires a party to file a complaint in court within one year of the creation of the lien;
- allows the Office of State Debt Collection to obtain records and databases by entering into written agreements with other government agencies for the purpose of collecting state accounts receivable; and
- provides technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

15-1-4, as last amended by Laws of Utah 2010, Chapter 102
63A-1-109, as last amended by Laws of Utah 2006, Chapter 139
63A-1-109.5, as enacted by Laws of Utah 2010, Chapter 341
63A-3-103, as last amended by Laws of Utah 2010, Chapter 341
63A-3-301, as renumbered and amended by Laws of Utah 1993, Chapter 212
63A-3-303, as renumbered and amended by Laws of Utah 1993, Chapter 212
63A-3-304, as renumbered and amended by Laws of Utah 1993, Chapter 212
63A-3-307, as renumbered and amended by Laws of Utah 1993, Chapter 212
63A-3-308, as renumbered and amended by Laws of Utah 1993, Chapter 212
76-3-201.1, as last amended by Laws of Utah 2009, Chapter 356
78A-2-214, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-8-201, as last amended by Laws of Utah 2010, Chapter 345

RENUMBERS AND AMENDS:

63A-3-501, (Renumbered from 63A-8-101, as last amended by Laws of Utah 2009, Chapter 288)
63A-3-502, (Renumbered from 63A-8-201, as last amended by Laws of Utah 2009, Chapter 183)
63A-3-503, (Renumbered from 63A-8-203, as last amended by Laws of Utah 2005, Chapter 23)
63A-3-504, (Renumbered from 63A-8-204, as last amended by Laws of Utah 2008, Chapter 382)
63A-3-505, (Renumbered from 63A-8-301, as last amended by Laws of Utah 2006, Chapter 65)
63A-3-506, (Renumbered from 63A-8-302, as last amended by Laws of Utah 1999, Chapter 279)

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

Section 1. Section 15-1-4 is amended to read:

15-1-4. Interest on judgments.

(1) As used in this section, "federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

(2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate imposed under Subsection (3) on an amount not exceeding the sum of:

(i) the total of the principal balance of the deferred deposit loan;

(ii) interest at the rate imposed by the deferred deposit loan agreement for a period not exceeding 10 weeks as provided in Subsection 7-23-401(4);

(iii) costs;

(iv) attorney fees; and

(v) other amounts allowed by law and ordered by the court.

(3) (a) Except as otherwise provided by law, other civil and criminal judgments of the district court and justice court shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

(b) The postjudgment interest rate in effect at the time of the judgment shall remain the interest rate for the duration of the judgment.

(c) The interest on criminal judgments shall be calculated on the total amount of the judgment.

(d) Interest paid on state revenue shall be deposited in accordance with Section [~~63A-8-301~~] 63A-3-505.

(e) Interest paid on revenue to a county or municipality shall be paid to the general fund of the county or municipality.

Section 2. Section 63A-1-109 is amended to read:

63A-1-109. Divisions of department -- Administration.

(1) The department shall be composed of the following divisions:

(a) administrative rules;

(b) archives and records;

(c) facilities construction and management;

(d) finance;

(e) fleet operations;

[~~(f) office of state debt collection;~~]

[~~(g)~~] (f) state purchasing and general services;

[~~(h)~~] (g) risk management; and

[~~(i)~~] (h) office of child welfare parental defense.

(2) Each division shall be administered and managed by a division director.

Section 3. Section 63A-1-109.5 is amended to read:

63A-1-109.5. Department authority to operate a division as an internal service fund agency -- Exception.

[~~(1) Except as provided in Subsection (2) and subject~~] Subject to Section 63A-1-114 and provisions governing internal service funds or internal service fund agencies under Title 63J, Chapter 1, Budgetary Procedures Act, the department may operate a division described in Section 63A-1-109 as an internal service fund agency.

[~~(2) The department may not operate the division described in Subsection 63A-1-109(1)(f) as an internal service fund agency.~~]

Section 4. Section 63A-3-103 is amended to read:

63A-3-103. Duties of director of division -- Application to institutions of higher education.

(1) The director of the Division of Finance shall:

(a) define fiscal procedures relating to approval and allocation of funds;

(b) provide for the accounting control of funds;

(c) approve proposed expenditures for the purchase of supplies and services;

(d) promulgate rules that:

(i) establish procedures for maintaining detailed records of all types of leases;

(ii) account for all types of leases in accordance with generally accepted accounting principles;

(iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and

(iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance;

(e) if the department operates the Division of Finance as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee; [~~and~~]

(f) oversee the Office of State Debt Collection; and

[~~(f)~~] (g) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.

(2) (a) Institutions of higher education are subject to the provisions of Title 63A, Chapter 3, Part 1, General Provisions, and Part 2, Accounting System, only to the extent expressly authorized or required by the State Board of Regents under Title 53B, State System of Higher Education.

(b) Institutions of higher education shall submit financial data for the past fiscal year conforming to generally accepted accounting principles to the director of the Division of Finance.

(3) The Division of Finance shall prepare financial statements and other reports in accordance with legal requirements and generally accepted accounting principles for the state auditor's examination and certification:

(a) not later than 60 days after a request from the state auditor; and

(b) at the end of each fiscal year.

Section 5. Section 63A-3-301 is amended to read:

63A-3-301. Definitions.

As used in this part, "account receivable" means any amount due the state or any other governmental entity as a result of a court or administrative order, or for which materials or services have been provided but for which payment has not been received by the servicing unit.

Section 6. Section 63A-3-303 is amended to read:

63A-3-303. Notice to debtor -- Contents.

(1) Upon default in payment of any account receivable that is not due pursuant to final court or administrative order or judgment, the entity responsible for collecting the account shall send a notice by [~~certified~~] mail to the debtor at the debtor's last-known address.

(2) The notice shall state:

(a) the date and amount of the receivable;

(b) a demand for immediate payment of the amount;

(c) a statement of the right of the debtor to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner;

(d) the time within which a written response must be filed; and

(e) a statement notifying the debtor that the state may obtain an order under this part and execute upon income tax overpayments or refunds of the debtor if:

(i) the debtor fails to respond to the notice; or

(ii) a hearing is held and the hearing officer decides against the debtor.

Section 7. Section 63A-3-304 is amended to read:

63A-3-304. Effect of nonpayment or failure to respond.

If a written response or payment of delinquent receivable is not received by the state within 15 days from the date of receipt of the notice by the debtor, the debtor is in default and the state may determine the balance due and collect the balance as provided in Section 63A-3-307.

Section 8. Section 63A-3-307 is amended to read:

63A-3-307. Abstract of order and nonpayment or failure to respond -- Liens.

(1) [~~An abstract of an order of a hearing examiner stating a default may be filed with the State Tax Commission, and when filed, constitutes a lien to the extent~~] The following shall constitute a lien in the amount of the receivable plus interest and collection costs allowed by law against any state income tax refund or overpayment due or to become due the debtor [~~for a period of eight years from the date of the order, unless satisfied or otherwise released in writing by the state.~~]:

(a) an abstract of an administrative order; or

(b) nonpayment or failure to respond as provided under Section 63A-3-304.

(2) The lien created by this section shall, for the purposes of Section 59-10-529 only, be considered a judgment, but no credit of a tax refund or overpayment may be made on account of this lien until 20 days after the date of the [~~hearing examiner's~~] administrative order.

(3) The lien created by this section shall remain effective for eight years.

Section 9. Section 63A-3-308 is amended to read:

63A-3-308. Judicial review -- Effect on lien.

(1) A judicial review of [~~an order of a hearing examiner~~] a lien created under Section 63A-3-307 may be obtained by any party within one year of the creation of the lien by filing a complaint with the district court.

(2) (a) A notice of the filing of a complaint may be filed with the State Tax Commission.

(b) If notice is filed, the tax commission may take no action with respect to the lien created by Section 63A-3-307 until the matter is finally disposed of by the courts, except as provided in this part.

Section 10. Section 63A-3-501, which is renumbered from Section 63A-8-101 is renumbered and amended to read:

Part 5. Office of State Debt Collection

[~~63A-8-101~~]. 63A-3-501. Definitions.

As used in this [~~chapter~~] part:

(1) (a) "Accounts receivable" or "receivables" means any amount due the state from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third-party claims, sale of goods, sale of services, claims, and damages.

(2) "Administrative offset" means:

(a) a reduction of an individual's tax refund or other payments due to the individual to reduce or eliminate accounts receivable that the individual owes to the state; and

(b) a reduction of an entity's tax refund or other payments due to the entity to reduce or eliminate accounts receivable that the entity owes to the state.

(3) "Entity" means an individual, a corporation, partnership, or other organization that pays taxes to or does business with the state.

(4) "Office" means the Office of State Debt Collection established by this [~~chapter~~] part.

(5) "Past due" means any accounts receivable that the state has not received by the payment due date.

(6) (a) "State agency" includes any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of Utah state government, including the legislative and judicial branches of state government.

(b) "State agency" does not include:

(i) any institution of higher education;

(ii) except in Subsection [~~63A-8-201~~] 63A-3-502(7)(g), the State Tax Commission; or

(iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:

(A) Section 34A-1-405;

(B) Title 34A, Chapter 2, Workers' Compensation Act;

(C) Title 34A, Chapter 3, Utah Occupational Disease Act; or

(D) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act.

(7) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

Section 11. Section 63A-3-502, which is renumbered from Section 63A-8-201 is renumbered and amended to read:

[~~63A-8-201~~]. 63A-3-502. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the [~~Department of Administrative Services~~] Division of Finance.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to all state agencies on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by all state agencies;

(g) prepare quarterly and annual reports of the state's receivables;

(h) create or coordinate a state accounts receivable database;

(i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;

(j) identify those state agencies that are not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between state agencies to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between state agencies;

(m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;

(n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;

(o) be a real party in interest for an account receivable referred to the office by any state agency; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, [~~63A-8-302~~] 63A-3-506, and 78A-5-110.

(4) The office may:

(a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;

(b) collect accounts receivables for higher education entities, if the higher education entity agrees;

(c) prepare a request for proposal for consulting services to:

(i) analyze the state's receivable management and collection efforts; and

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private or state agencies to collect past-due accounts;

(e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;

(f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206;

(g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:

(i) a fee to cover the administrative costs of collection, on accounts administered by the office;

(ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;

(iii) an interest charge that is:

(A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or

(B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

(iv) fees to collect accounts receivable for higher education;

(h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;

(i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;

(j) file a satisfaction of judgment in the district court by following the procedures and requirements of the Utah Rules of Civil Procedure;

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary; [~~and~~]

(l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record[~~.~~]; and

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require state agencies to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in their management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

(9) The summary shall include:

(a) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(c) any costs incurred in the collection process.

(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

Section 12. Section 63A-3-503, which is renumbered from Section 63A-8-203 is renumbered and amended to read:

[~~63A-8-203~~]. 63A-3-503. Legal services.

The Office of the Attorney General shall:

(1) provide to the office all legal services and advice related to the collection of accounts receivable owed to the state; and

(2) establish policies governing:

(a) legal matters involving accounts receivable; and

(b) litigation of past-due accounts receivable.

Section 13. Section 63A-3-504, which is renumbered from Section 63A-8-204 is renumbered and amended to read:

[~~63A-8-204~~]. 63A-3-504. Rulemaking authority -- Collection techniques.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules:

(1) providing details, as necessary, for the distribution of debts collected in accordance with the priorities under Subsection [~~63A-8-301~~] 63A-3-505(3); and

(2) to govern collection techniques, which may include the use of:

(a) credit reporting bureaus;

(b) collection agencies;

(c) garnishments;

(d) liens;

(e) judgments; and

(f) administrative offsets.

Section 14. Section 63A-3-505, which is renumbered from Section 63A-8-301 is renumbered and amended to read:

[~~63A-8-301~~]. 63A-3-505. State Debt Collection Fund.

(1) There is created a restricted special revenue fund entitled the "State Debt Collection Fund."

(2) The fund consists of:

(a) all amounts appropriated to the fund under this chapter;

(b) fees and interest established by the office under Subsection [~~63A-8-201~~] 63A-3-502(4)(g); and

(c) except as otherwise provided by law, all postjudgment interest collected by the office or the state except postjudgment interest on restitution.

(3) Monies in this fund shall be used to pay for:

(a) the costs of the office in the performance of its duties under this chapter;

(b) restitution to victims to whom the debt is owed;

(c) interest accrued that is associated with the debt;

(d) principal on the debt to the state agencies or other entities that placed the receivable for collection; and

(e) other legal obligations including those ordered by a court.

(4) (a) The fund may collect interest.

(b) All interest earned from the fund shall be deposited in the General Fund.

(5) The office shall ensure that monies remaining in the fund at the end of the fiscal year that are not committed under the priorities established under Subsection (3) are deposited into the General Fund.

(6) (a) The office shall report at least annually to the appropriations subcommittee assigned to review the budget of the Department of Administrative Services on the fund balance and its revenues and expenditures and administrative offsets.

(b) The report shall include the amounts paid under each provision under Subsection (3).

Section 15. Section 63A-3-506, which is renumbered from Section 63A-8-302 is renumbered and amended to read:

[~~63A-8-302~~]. 63A-3-506. Allocation of funds.

(1) Except as provided in Subsection (2), the money collected by the office less the office's fees shall be allocated on a prorated basis to the various revenue types that generated the accounts receivable.

(2) Notwithstanding the requirements of Subsection (1):

(a) federal cost allocation requirements for specific accounts receivable related to programs that are supported by federal funds take precedence over other cost allocation methods provided in this section; and

(b) the office shall use interest and fees collected on past due accounts receivable as provided in Section [~~63A-8-301~~] 63A-3-505.

Section 16. Section 76-3-201.1 is amended to read:

76-3-201.1. Collection of criminal judgment accounts receivable.

(1) As used in this section:

(a) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(2) (a) A criminal judgment account receivable ordered by the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.

(b) (i) The court may permit a defendant to pay a criminal judgment account receivable in installments.

(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:

(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or

(b) issue a warrant of arrest.

(4) (a) Unless the defendant shows that the default was not attributable to an intentional

refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.

(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to compensatory service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the district court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection [~~63A-8-201~~] 63A-3-502(4)(g) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether or not to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the district court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.

(b) Failure to pay the obligation may be held to be contempt under Subsection (3).

(10) The prosecuting attorney may collect restitution in behalf of a victim.

Section 17. Section 78A-2-214 is amended to read:

78A-2-214. Collection of accounts receivable.

(1) As used in this section:

(a) "Accounts receivable" means any amount due the state from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third party claims, sale of goods, sale of services, claims, and damages.

(2) If the Department of Corrections does not have responsibility under Subsection 77-18-1(9) for collecting an account receivable and if the Office of State Debt Collection does not have responsibility under Subsection [~~63A-8-201~~] 63A-3-502(6), the district court shall collect the account receivable.

(3) (a) In the juvenile court, money collected by the court from past-due accounts receivable may be used to offset system, administrative, legal, and other costs of collection.

(b) The juvenile court shall allocate money collected above the cost of collection on a pro rata basis to the various revenue types that generated the accounts receivable.

(4) The interest charge established by the Office of State Debt Collection under Subsection [~~63A-8-201~~] 63A-3-502(4)(g)(iii) may not be assessed on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

Section 18. Section 78B-8-201 is amended to read:

78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI cases or providing illegal controlled substances -- Division of award with state.

(1) (a) Except as otherwise provided by statute, punitive damages may be awarded only if

compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.

(b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's:

(i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

(ii) causing death of another person by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or

(iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.

(c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not subject to the prior award of compensatory or general damages under Subsection (1)(a) whether or not restitution has been paid to the merchant prior to or as a part of a civil action under Section 78B-3-108.

(2) Evidence of a party's wealth or financial condition shall be admissible only after a finding of liability for punitive damages has been made.

(a) Discovery concerning a party's wealth or financial condition may only be allowed after the party seeking punitive damages has established a prima facie case on the record that an award of punitive damages is reasonably likely against the party about whom discovery is sought and, if disputed, the court is satisfied that the discovery is not sought for the purpose of harassment.

(b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the tortfeasor's:

(i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

(ii) causing death of another person or causing a person to be addicted by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or

(iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.

(3) (a) In any case where punitive damages are awarded, the court shall enter judgment as follows:

(i) for the first $50,000, judgment shall be in favor of the injured party; and

(ii) any amount in excess of $50,000 shall be divided equally between the state and the injured party, and judgment to each entered accordingly.

(b) (i) The actual and bona fide attorney fees and costs incurred in obtaining and collecting the judgment for punitive damages shall be considered to have been incurred by the state and the injured party in proportion to the judgment entered in each party's behalf.

(A) The state and injured party shall be responsible for each one's proportionate share only.

(B) The state is liable to pay its proportionate share only to the extent it receives payment toward its judgment.

(ii) If the court awards attorney fees and costs to the injured party as a direct result of the punitive damage award, the state shall have a corresponding credit in a proportionate amount based on the amounts of the party's respective punitive damage judgments. This credit may be applied as an offset against the amount of attorney fees and costs charged to the state for obtaining the punitive damage judgment.

(c) The state shall have all rights due a judgment creditor to collect the full amounts of both punitive damage judgments until the judgments are fully satisfied.

(i) Neither party is required to pursue collection.

(ii) In pursuing collection, the state may exercise any of its collection rights under Section 63A-3-301 et seq., Section [~~63A-8-201~~] 63A-3-502 et seq., and any other statutory provisions. Any amounts collected on these judgments by either party shall be held in trust and distributed as set forth in Subsection (3)(e).

(d) Unless all affected parties, including the state, expressly agree otherwise, collection on the punitive damages judgment shall be deferred until all other judgments have been fully paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution, or otherwise, shall be distributed and applied in the following order:

(i) to the judgment for compensatory damage and any applicable judgment for attorney fees and costs;

(ii) to the initial $50,000 of the punitive damage judgment;

(iii) to any judgment for attorney fees and costs awarded as a direct result of the punitive damages; and

(iv) to the remaining judgments for punitive damages.

(e) Any partial payments shall be distributed equally between the state and injured party.

(f) After the payment of attorney fees and costs, all amounts paid on the state's judgment shall be remitted to the state treasurer to be deposited into the General Fund.

CHAPTER 80
S. B. 212
Passed March 8, 2011
Approved March 18, 2011
Effective May 10, 2011
(Exception clause in Section 6)

JUDICIAL EVALUATION AMENDMENTS

Chief Sponsor: D. Chris Buttars
House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill makes amendments to the Judicial Performance Evaluation Commission.

Highlighted Provisions:

This bill:

- allows the Judicial Performance Evaluation Commission to vote in a closed meeting on whether or not to recommend that the voters retain a judge;
- requires that any record of an individual commissioner's vote be a protected record under Title 63G, Chapter 2, Government Records Access and Management Act;
- removes litigants from the judicial performance evaluation survey;
- reduces the number of categories to be included in the performance evaluation survey;
- allows survey respondents to supplement responses to survey questions with written comments;
- establishes a clear minimum performance standard;
- establishes that the judicial performance evaluation survey is to be reported in three categories: legal ability, judicial temperament and integrity, and administrative abilities;
- allows only a judge who is the subject of an unfavorable retention recommendation to meet with the commission about its recommendation;
- allows the judicial performance evaluation commission to only report public discipline that a judge has received; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
78A-12-203, as last amended by Laws of Utah 2010, Chapter 98
78A-12-204, as last amended by Laws of Utah 2010, Chapter 98
78A-12-205, as last amended by Laws of Utah 2010, Chapter 98
78A-12-206, as last amended by Laws of Utah 2010, Chapter 98

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

Section 1. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and

has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law,

ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

[~~(54)~~] (55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

[~~(55)~~] (56) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

[~~(56)~~] (57) records contained in the Management Information System created in Section 62A-4a-1003;

[~~(57)~~] (58) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

[~~(58)~~] (59) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

[~~(59)~~] (60) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; and

[~~(60)~~] (61) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality.

Section 2. Section 78A-12-203 is amended to read:

78A-12-203. Judicial performance evaluations.

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that

the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) Before considering the judicial performance evaluation of any judge, the commission shall notify the judge of the date and time of any commission meeting during which the judge's judicial performance evaluation will be considered.

(b) The commission shall allow a judge who is the subject of a judicial performance evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.

(c) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(d) Any record of an individual commissioner's vote on whether or not to recommend that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) The commission shall compile a midterm report of its judicial performance evaluation of a judge.

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

(c) The report shall be provided to the evaluated judge and the presiding judge of the district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.

(7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Section 3. Section 78A-12-204 is amended to read:

78A-12-204. Judicial performance survey.

(1) The judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission.

(2) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

(a) attorneys who have appeared before the judge as counsel;

(b) jurors who have served in a case before the judge; and

[~~(c) litigants whose cases have been considered by the judge; and~~]

[~~(d)~~] (c) court staff who have worked with the judge.

(3) The commission may include an additional classification of respondents if the commission:

(a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and

(b) establishes the additional classification of respondents by rule.

(4) All survey responses are anonymous, including comments included with a survey response.

(5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.

(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.

(7) Survey [~~topics~~] categories shall include questions concerning a judge's:

(a) legal ability, including the following:

(i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(ii) attentiveness to factual and legal issues before the court;

(iii) adherence to precedent and ability to clearly explain departures from precedent; [~~and~~]

(iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;

(v) ability to write clear judicial opinions; and

(vi) ability to clearly explain the legal basis for judicial opinions;

[~~(b) integrity, including the following:~~]

[~~(i) avoidance of impropriety or the appearance of impropriety; and~~]

[~~(ii) display of fairness and impartiality toward all parties;~~]

[~~(c) communication skills, including clearly articulating the basis for written rulings;~~]

[~~(d)~~] (b) judicial temperament and integrity, including the following:

(i) demonstration of courtesy toward attorneys, court staff, and others in the judge's court;

(ii) maintenance of decorum in the courtroom;

(iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system; [~~and~~]

(iv) preparedness for oral argument; [~~and~~]

(v) avoidance of impropriety or the appearance of impropriety;

(vi) display of fairness and impartiality toward all parties; and

(vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and

[~~(e)~~] (c) administrative performance, including the following:

(i) management of workload;

(ii) sharing proportionally the workload within the court or district; and

(iii) issuance of opinions and orders without unnecessary delay.

(8) [~~(a)~~] If the commission determines that a certain survey question or [~~topic~~] category of questions is not appropriate for a [~~category of respondents~~] respondent group, the commission may omit that question or [~~topic~~] category of questions from the survey provided to that [~~category of respondents~~] respondent group.

[~~(b) Litigants may be surveyed only about judicial temperament, integrity, and communication skills.~~]

[~~(c) The commission shall, by rule, determine appropriate litigants to be surveyed.~~]

(9) (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:

[~~(a)~~] (i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or

[~~(b)~~] (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.

(b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.

(10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.

(11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Section 4. Section 78A-12-205 is amended to read:

78A-12-205. Minimum performance standards.

(1) The commission shall establish [~~a~~] minimum performance [~~standard~~] standards requiring that:

(a) the judge have no more than one [~~formal disciplinary action taken against the judge~~] public reprimand issued by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current term; and

(b) the judge receive a minimum score on the judicial performance survey as follows:

(i) an average score of [~~at least a 3.0~~] no less than 65% on [~~at least 80% of the questions, excluding litigant respondents, for questions scored on the numerical scale~~] each survey category as provided in Subsection 78A-12-204(7); and

(ii) if the commission includes a question on the survey that does not use the numerical scale, the commission shall establish the minimum performance standard for all questions[~~, excluding any question to litigant respondents,~~] that do not use the numerical scale to be substantially equivalent to the standard required under Subsection (1)(b)(i).

(2) The commission may establish an additional minimum performance standard if the commission by at least two-thirds vote:

(a) determines that satisfaction of the standard is necessary to the satisfactory performance of the judge; and

(b) adopts the standard.

(3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a minimum performance standard.

Section 5. Section 78A-12-206 is amended to read:

78A-12-206. Publication of the judicial performance evaluation -- Response by judge.

(1) (a) The commission shall compile a retention report of its judicial performance evaluation of a judge.

(b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the retention election.

(c) A report prepared in accordance with Subsection (1)(b) and information obtained in connection with the evaluation [~~become~~] becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.

(d) [~~A~~] Information collected and a report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) [~~A judge who is the subject of a retention report under this section, within~~] Within 15 days of receiving a copy of the commission's report under Subsection (1)(b)[~~, may~~]:

(a) a judge who is the subject of an unfavorable retention recommendation under this section may:

[~~(a)~~] (i) provide a written response to the commission about the report; and

[~~(b)~~] (ii) request an interview with the commission for the purpose of addressing the report[~~.~~]; and

(b) a judge who is the subject of a favorable retention recommendation under this section may provide a written response to the commission about the commission's report.

(3) (a) After receiving a response from a judge in any form allowed by Subsection (2), the commission may meet and reconsider its decision to recommend the judge not be retained.

(b) If the commission does not change its decision to recommend the judge not be retained, the judge may provide a written statement, not to exceed 100 words, that shall be included in the commission's report.

(4) The retention report of a judicial performance evaluation shall include:

(a) the results of the judicial performance survey, in both raw and summary form;

(b) information concerning the judge's compliance with the minimum performance standards;

(c) information concerning any [~~formal or informal discipline against~~] public discipline that a judge [~~that~~] has received that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct Commission;

(d) a narrative concerning the judge's performance;

(e) the commission's recommendation concerning whether the judge should be retained, or the statement required of the commission if it declines to make a recommendation;

(f) the number of votes for and against the commission's recommendation; and

(g) any other information the commission considers appropriate to include in the report.

(5) (a) The commission may not include in its retention report specific information concerning an earlier judicial performance evaluation.

(b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if the reference is in general terms.

(6) The retention report of the commission's judicial performance evaluation shall be made publicly available on an Internet website.

(7) The commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

(8) The commission shall provide a summary of the judicial performance evaluation for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

(9) The commission may also provide any information collected during the course of a judge's judicial performance evaluation immediately preceding the judge's retention election to the public to the extent that information is not otherwise subject to restrictions on disclosure.

(10) The commission shall provide the Judicial Council with:

(a) the judicial performance survey results for each judge; and

(b) a copy of the retention report of each judicial performance evaluation.

(11) The Judicial Council shall provide information obtained concerning a judge under Subsection (10) to the subject judge's presiding judge, if any.

Section 6. Effective date.

This bill takes effect on May 10, 2011, except that the amendments to Subsection 78A-12-205(1)(b)(i) in this bill take effect on January 1, 2013.

CHAPTER 81
S. B. 230
Passed March 3, 2011
Approved March 18, 2011
Effective May 10, 2011

DNA AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies provisions of the Public Safety Code relating to the use of the DNA Specimen Restricted Account.

Highlighted Provisions:

This bill:

- authorizes the Department of Public Safety to reimburse sheriffs for collecting DNA specimens as provided in Sections 53-10-404 and 53-10-404.5.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-407, as last amended by Laws of Utah 2010, Chapter 405

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

Section 1. Section 53-10-407 is amended to read:

53-10-407. DNA Specimen Restricted Account.

(1) There is created the DNA Specimen Restricted Account, which is referred to in this section as "the account."

(2) The sources of money for the account are:

(a) DNA collection fees paid under Section 53-10-404;

(b) any appropriations made to the account by the Legislature; and

(c) all federal money provided to the state for the purpose of funding the collection or analysis of DNA specimens collected under Section 53-10-403.

(3) The account shall earn interest, and this interest shall be deposited in the account.

(4) The Legislature may appropriate money from the account solely for the following purposes:

(a) to the Department of Corrections for the costs of collecting DNA specimens as required under Section 53-10-403;

(b) to the juvenile court for the costs of collecting DNA specimens as required under Sections 53-10-403 and 78A-6-117;

(c) to the Division of Juvenile Justice Services for the costs of collecting DNA specimens as required under Sections 53-10-403 and 62A-7-104; and

(d) to the Department of Public Safety for the costs of:

(i) storing and analyzing DNA specimens in accordance with the requirements of this part; [~~and~~]

(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided in Subsection 78B-9-301(8)[~~.~~]; and

(iii) reimbursing sheriffs for collecting the DNA specimens as provided under Sections 53-10-404 and 53-10-404.5.

(5) Appropriations from the account to the Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and to the Department of Public Safety are nonlapsing.

CHAPTER 82
S. B. 271
Passed March 3, 2011
Approved March 18, 2011
Effective May 10, 2011

EMINENT DOMAIN REVISIONS

Chief Sponsor: J. Stuart Adams
House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill amends provisions relating to the right to exercise eminent domain.

Highlighted Provisions:

This bill:

- amends provisions authorizing an entity to exercise eminent domain for:
  - a byroad leading from a highway to a residence, a development, or a farm; and
  - sewage service for a development; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2010, Chapter 401

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

Section 1. Section 78B-6-501 is amended to read:

78B-6-501. Eminent domain -- Uses for which right may be exercised.

Subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:

(1) all public uses authorized by the federal government;

(2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;

(3) (a) public buildings and grounds for the use of any county, city, town, or board of education;

(b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;

(c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;

(d) bicycle paths and sidewalks adjacent to paved roads;

(e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and

(f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;

(5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution;

(6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including minerals in solution;

(b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution;

(c) mill dams;

(d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

(e) solar evaporation ponds and other facilities for the recovery of minerals in solution; and

(f) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;

(7) byroads leading from a highway to [~~an existing or proposed~~]:

(a) a residence;

(b) a development; or

(c) a farm;

(8) telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants;

(9) sewage service for:

(a) a city, a town, or any settlement of not less than 10 families;

(b) [~~an existing or proposed~~] a development;

(c) a public building belonging to the state; or

(d) a college or university;

(10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;

(11) cemeteries and public parks, except for a park whose primary use is:

(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use;

(12) pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar; and

(13) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this [~~subsection~~] section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

CHAPTER 83
H. B. 16
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

PHARMACY BENEFITS MANAGER ACT

Chief Sponsor: Evan J. Vickers
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill enacts the Pharmacy Benefits Manager Act.

Highlighted Provisions:

This bill:

- defines terms;
- provides that when the Utah State Retirement Board (board) issues a request for proposals (RFP) for a pharmacy benefits manager (PBM) to provide pharmacy benefits management services for the Public Employees' Benefit and Insurance Program (program), the RFP shall provide each responder with the option to include, among the billing options proposed, a billing option that requires the PBM to, on at least a monthly basis, submit to the board an invoice for all pharmacy services paid by the PBM on behalf of the program since the last request for payment or reimbursement; and
- provides that an invoice described in the preceding paragraph shall state, as a separate item from any other amount:
  - the total amount due to the pharmacy benefit manager for all pharmacy services billed in the invoice; and
  - the total amount paid by the pharmacy benefit manager for the same pharmacy services for which payment is sought in that invoice.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
49-20-501, Utah Code Annotated 1953
49-20-502, Utah Code Annotated 1953
49-20-503, Utah Code Annotated 1953

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

Section 1. Section 49-20-501 is enacted to read:

Part 5. Pharmacy Benefits Manager Act

49-20-501. Title.

This part is known as the "Pharmacy Benefits Manager Act."

Section 2. Section 49-20-502 is enacted to read:

49-20-502. Definitions.

As used in this part:

(1) "Health benefit plan" means:

(a) a health benefit plan as defined in Section 31A-1-301; or

(b) a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(2) "Pharmacist" is as defined in Section 58-17b-102.

(3) "Pharmacy" is as defined in Section 58-17b-102.

(4) "Pharmacy benefits management service" means any of the following services provided to a health benefit plan, or to a participant of the health benefit plan:

(a) negotiating the amount to be paid by a health benefit plan for a prescription drug; or

(b) administering or managing prescription drug benefits provided by the health benefit plan for the benefit of a participant of the health benefit plan, including:

(i) mail service pharmacy;

(ii) specialty pharmacy;

(iii) claims processing;

(iv) payment of a claim;

(v) retail network management;

(vi) clinical formulary development;

(vii) clinical formulary management services;

(viii) rebate contracting;

(ix) rebate administration;

(x) a participant compliance program;

(xi) a therapeutic intervention program;

(xii) a disease management program; or

(xiii) a service that is similar to, or related to, a service described in Subsection (4)(a) or (4)(b)(i) through (xii).

(5) "Pharmacy benefits manager" means a person that provides a pharmacy benefits management service to a health benefit plan.

(6) "Pharmacy service" means a product, good, or service provided by a pharmacy or

pharmacist to an individual.

Section 3. Section 49-20-503 is enacted to read:

49-20-503. Request for proposals for pharmacy benefits manager for Public Employees' Benefit and Insurance Program.

(1) When the board issues a request for proposals for a pharmacy benefits manager to provide pharmacy benefits management services for the program, the request for proposals shall provide each responder with the option to include, among

the billing options proposed, a billing option that complies with the requirements described in this section.

(2) The billing option described in Subsection (1) shall require the pharmacy benefits manager to, on at least a monthly basis, submit to the board an invoice for all pharmacy services paid by the pharmacy benefits manager on behalf of the program since the last request for payment or reimbursement.

(3) The invoice described in Subsection (2) shall state, as a separate item from any other amount:

(a) the total amount due to the pharmacy benefits manager for all pharmacy services billed in the invoice; and

(b) the total amount paid by the pharmacy benefits manager for the same pharmacy services for which payment is sought in that invoice.

CHAPTER 84
H. B. 17
Passed March 9, 2011
Approved March 21, 2011
Effective January 1, 2012

ENTERPRISE ZONE AMENDMENTS

Chief Sponsor: Kraig Powell
Senate Sponsor: Kevin T. Van Tassell
Cosponsors: Paul Ray
Christine F. Watkins

LONG TITLE

General Description:

This bill modifies provisions of the Enterprise Zone Act related to the definitions of business entity and new full-time employee position, the criteria for designation of an enterprise zone, business entities qualifying for tax incentives, state tax credits applicable in an enterprise zone, annual reports, and technology-based service contracts within enterprise zones.

Highlighted Provisions:

This bill:

- modifies the definition of business entity and defines new full-time employee position as used in the Enterprise Zone Act;
- modifies the criteria used for the designation of an enterprise zone;
- modifies the eligibility review procedure of applications for designation as an enterprise zone;
- modifies provisions related to business entities qualifying for tax incentives under the Enterprise Zone Act;
- modifies provisions related to tax credits which may be claimed for new full-time employee positions;
- provides that a business entity may not claim a tax credit under the Enterprise Zone Act if it is primarily engaged in a retail trade;
- modifies annual enterprise zone reporting provisions; and
- provides a repealer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2012.

Utah Code Sections Affected:

AMENDS:

63M-1-402, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-403, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-404, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-406, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-412, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-413, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-414, as renumbered and amended by Laws of Utah 2008, Chapter 382

REPEALS:

63M-1-416, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63M-1-402 is amended to read:

63M-1-402. Definitions.

As used in this part:

(1) "Business entity" means an entity, sole proprietorship, or individual:

(a) including a claimant, estate, or trust; and

(b) under which or by whom business is conducted or transacted.

(2) [~~(a)~~] "Claimant" means a resident or nonresident person that has:

[~~(i)~~] (a) Utah taxable income as defined in Section 59-7-101; or

[~~(ii)~~] (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability [~~or~~] and Information.

[~~(b) "Claimant" does not include an estate or trust.~~]

(3) "County applicant" means the governing authority of a county that meets the requirements for designation as an enterprise zone under Section 63M-1-404.

(4) "Estate" means a nonresident estate or a resident estate that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.

(5) "Municipal applicant" means the governing authority of a city or town that meets the requirements for designation as an enterprise zone under Section 63M-1-404.

(6) "New full-time employee position" means a position that has been newly created and then filled by an employee working at least 30 hours per week:

(a) for a period of not less than six consecutive months; and

(b) where the period ends in the tax year for which the credit is claimed.

[~~(6)~~] (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a [~~claimant, estate, or trust~~] business entity may:

(a) claim:

(i) as provided by statute; and

(ii) in an amount that does not exceed the [~~claimant's, estate's, or trust's~~] business entity's tax liability for a taxable year under:

(A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(B) Title 59, Chapter 10, Individual Income Tax Act; and

(b) carry forward or carry back:

(i) if allowed by statute; and

(ii) to the extent that the amount of the tax credit exceeds the [~~claimant's, estate's, or trust's~~] business entity's tax liability for a taxable year under:

(A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(B) Title 59, Chapter 10, Individual Income Tax Act.

[~~(7)~~] (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in Section 63M-1-413.

[~~(8)~~] (9) "Trust" means a nonresident trust or a resident trust that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.

Section 2. Section 63M-1-403 is amended to read:

63M-1-403. Powers of the office.

The office shall:

(1) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the enterprise zones;

(2) evaluate an application for designation as an enterprise zone from a county applicant or a municipal applicant [~~to be designated an enterprise zone~~] and determine if the applicant qualifies for that designation;

(3) provide technical assistance to county applicants and municipal applicants in developing applications for designation as enterprise zones;

(4) assist county applicants and municipal applicants designated as enterprise zones in obtaining assistance from the federal government and agencies of the state;

(5) assist a qualified business entity in obtaining the benefits of an incentive or inducement program authorized by this part; and

(6) prepare an annual evaluation based, in part, on data provided by the State Tax Commission that:

(a) [~~evaluating~~] evaluates the effectiveness of the program and any suggestions for legislation; and

(b) [~~that~~] is available upon request to the governor and to the Revenue and Taxation Interim [~~Committee~~] and the Workforce Services and Economic Development Interim Committees of the Legislature by November 1 of each year.

Section 3. Section 63M-1-404 is amended to read:

63M-1-404. Criteria for designation of enterprise zones -- Application.

(1) A county applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with the other requirements of this part:

[~~(a) verifies that the entire county is not located in a metropolitan statistical area that is entirely located within Utah, except that this requirement does not apply to a third, fourth, fifth, or sixth class county as classified under Section 17-50-501;~~]

[~~(b)~~] (a) verifies that the county has a population of not more than 50,000 [~~or less~~]; and

[~~(c)~~] (b) provides clear evidence of the need for development in the county.

(2) A municipal applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with other requirements of this part:

(a) verifies that the municipality is a city of the fifth class or a town;

(b) verifies that the municipality is within a county that has a population of not more than 50,000 [~~or less~~]; and

(c) provides clear evidence of the need for development in the municipality.

(3) An application filed under Subsection (1) or (2) shall be in a form and in accordance with procedures approved by the office, and shall include the following information:

(a) a plan developed by the county applicant or municipal applicant that identifies local contributions meeting the requirements of Section 63M-1-405;

(b) the county applicant or municipal applicant has a development plan that outlines:

(i) the types of investment and development within the zone that the county applicant or municipal applicant expects to take place if the incentives specified in this part are provided;

(ii) the specific investment or development reasonably expected to take place;

(iii) any commitments obtained from businesses;

(iv) the projected number of jobs that will be created and the anticipated wage level of those jobs;

(v) any proposed emphasis on the type of jobs created, including any affirmative action plans; and

(vi) a copy of the county applicant's or municipal applicant's economic development plan to demonstrate coordination between the zone and overall county or municipal goals;

(c) the county applicant's or municipal applicant's proposed means of assessing the effectiveness of the development plan or other programs [~~to be implemented~~] within the zone once they have been implemented within the zone;

(d) any additional information required by the office; and

(e) any additional information the county applicant or municipal applicant considers relevant to its designation as an enterprise zone.

Section 4. Section 63M-1-406 is amended to read:

63M-1-406. Eligibility review.

(1) [~~(a)~~] The office shall:

(a) review and evaluate the applications submitted under Section 63M-1-404; and [~~shall~~]

(b) determine whether each county applicant or municipal applicant is eligible for designation as an enterprise zone.

[~~(b) In determining whether a county applicant or municipal applicant is eligible, if unemployment, income, population, or other necessary data are not available for the county applicant or municipal applicant from the federal departments of labor or commerce or a state agency, the office may rely upon other data submitted by the applicant, if the office determines that it is statistically reliable or accurate.~~]

(2) (a) The office shall designate enterprise zones.

(b) The office shall consider and evaluate an application using the following criteria:

(i) the pervasiveness of poverty, unemployment, and general distress in the proposed zone;

(ii) the extent of chronic abandonment, deterioration, or reduction in value of commercial, industrial, or residential structures in the proposed zone, and the extent of property tax arrearages in the proposed zone;

(iii) the potential for new investment and economic development in the proposed zone;

(iv) the county applicant's or municipal applicant's proposed use of other state and federal development funds or programs to increase the probability of new investment and development occurring;

(v) the extent to which the projected development in the zone will provide employment to residents of the county and particularly individuals who are unemployed or who are economically disadvantaged;

(vi) the degree to which the county applicant's or municipal applicant's application promotes innovative solutions to economic development problems and demonstrates local initiative; and

(vii) other relevant factors that the office specifies in its recommendation.

Section 5. Section 63M-1-412 is amended to read:

63M-1-412. Business entities qualifying for tax incentives.

[~~The~~] (1) Except as otherwise provided in Subsection (2), the tax incentives described in this part are available only to a business entity for which at least 51% of the employees employed at facilities of the business entity located in the enterprise zone are individuals who, at the time of employment, reside in:

(a) the county in which the enterprise zone is located[~~,~~]; or

(b) an enterprise zone that is immediately adjacent and contiguous to the county in which the enterprise zone is located.

(2) Subsection (1) does not apply to a business entity that has no employees.

Section 6. Section 63M-1-413 is amended to read:

63M-1-413. State tax credits.

(1) Subject to the limitations of Subsections (2) through (4), the following nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an enterprise zone:

(a) a tax credit of $750 may be claimed by a business entity for each new full-time employee position [~~filled for not less than six months during a given tax year~~] created within the enterprise zone;

(b) an additional $500 tax credit may be claimed if the new full-time employee position created within the enterprise zone pays at least 125% of:

(i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or

(ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;

(c) an additional tax credit of $750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that adds value to agricultural commodities through manufacturing or processing;

(d) an additional tax credit of $200 may be claimed for two consecutive years for each new full-time employee position created within the enterprise zone that is filled by an employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for [~~two consecutive years~~] the year for which the credit is claimed;

(e) a tax credit of 50% of the value of a cash contribution to a private nonprofit corporation, except that the credit claimed may not exceed $100,000:

(i) that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(ii) whose primary purpose is community and economic development; and

(iii) that has been accredited by the board of directors of the Utah Rural Development Council;

(f) a tax credit of 25% of the first $200,000 spent on rehabilitating a building in the enterprise zone that has been vacant for two years or more; and

(g) an annual investment tax credit of 10% of the first $250,000 in investment, and 5% of the next

$1,000,000 qualifying investment in plant, equipment, or other depreciable property.

(2) (a) Subject to the limitations of Subsection (2)(b), a business entity claiming [~~a~~] tax [~~credit~~] credits under Subsections (1)(a) through (d) may claim the tax [~~credit~~] credits for up to 30 full-time employee positions [~~or less in each of its~~] per taxable [~~years~~] year.

(b) A business entity that received a tax credit for [~~its~~] one or more new full-time employee positions under Subsections (1)(a) through (d) in a prior taxable year may claim [~~an additional~~] a tax credit for a new full-time employee position in a subsequent taxable year under Subsections (1)(a) through (d) if:

(i) the business entity [~~creates~~] has created a new full-time [~~employee~~] position within the enterprise zone; and

(ii) the total number of full-time employee positions at the business entity at any point during the tax year for which the tax credit is being claimed is greater than the number of full-time employee positions [~~previously claimed by~~] that existed at the business entity [~~under Subsections (1)(a) through (d); and~~] at any point during the taxable year immediately preceding the taxable year for which the credit is being claimed.

[~~(iii) the total number of tax credits the business entity has claimed for its current taxable year, including the new full-time employee position for which the claimant, estate, or trust that is a business entity is claiming a tax credit, is less than or equal to 30.~~]

[~~(c) A business entity existing in an enterprise zone on the date of its designation shall calculate the number of full-time positions based on the average number of employees reported to the Department of Workforce Services.~~]

[~~(d)~~] (c) Construction jobs are not eligible for the tax credits under Subsections (1)(a) through (d).

(3) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the business entity may carry forward the amount of the tax credit exceeding the liability [~~may be carried forward~~] for a period that does not exceed the next three taxable years.

[~~(4) (a) If a business entity is located in a county that met the requirements of Subsections 63M-1-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January 1, 1998, because the county was located in a metropolitan statistical area in more than one state, the business entity:~~]

[~~(i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997;~~]

[~~(ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997; and~~]

[~~(iii) may qualify for tax credits for any taxable year beginning on or after January 1, 1998, if the county is designated as an enterprise zone in accordance with this part.~~]

[~~(b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business entity:~~]

[~~(i) may claim the tax credit by filing for the taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997:~~]

[~~(A) a return under Title 59, Chapter 7, Corporate Franchise and Income Taxes;~~]

[~~(B) an amended return under Title 59, Chapter 7, Corporate Franchise and Income Taxes;~~]

[~~(C) a return under Title 59, Chapter 10, Individual Income Tax Act; or~~]

[~~(D) an amended return under Title 59, Chapter 10, Individual Income Tax Act; and~~]

[~~(ii) may carry forward the tax credit to a taxable year beginning on or after January 1, 1998, in accordance with Subsection (3).~~]

[~~(5) The tax~~] (4) Tax credits under Subsections (1)(a) through (g) may not be claimed by a business entity primarily engaged in retail trade or by a public utilities business.

(5) A business entity that has no employees:

(a) may not claim tax credits under Subsections (1)(a) through (d); and

(b) may claim tax credits under Subsections (1)(e) through (g).

(6) A business entity may not claim or carry forward a tax credit available under this part for a taxable year during which the business entity has claimed the targeted business income tax credit available under Section 63M-1-504.

Section 7. Section 63M-1-414 is amended to read:

63M-1-414. Annual report.

[~~(1)~~] Each county applicant or municipal applicant designated as an enterprise zone shall annually report to the office regarding the economic activity that has occurred in the zone following the designation.

[~~(2) This information shall include:~~]

[~~(a) the number of jobs created in the zone;~~]

[~~(b) the number of economically disadvantaged individuals receiving public job training assistance in the zone;~~]

[~~(c) the average wage level of the jobs created;~~]

[~~(d) descriptions of any affirmative action programs undertaken by the county applicant or municipal applicant in connection with the enterprise zone;~~]

[~~(e) the amount of the county applicant's or municipal applicant's local contribution; and~~]

[~~(f) the number of businesses qualifying for, or directly benefiting from, the local contribution.~~]

Section 8. Repealer.

This bill repeals:

Section 63M-1-416, Technology-based service contracts within enterprise zones.

Section 9. Effective date.

This bill takes effect on January 1, 2012.

CHAPTER 85
H. B. 26
Passed February 10, 2011
Approved March 21, 2011
Effective May 10, 2011

HIGH OCCUPANCY TOLL LANE CUSTOMER INFORMATION

Chief Sponsor: Julie Fisher
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Government Records Access Management Act by amending provisions relating to high occupancy toll lane customer information.

Highlighted Provisions:

This bill:

- classifies certain electronic toll collection customer account information received or collected as a private record under the Government Records Access Management Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-302, as last amended by Laws of Utah 2010, Chapters 36 and 379

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

Section 1. Section 63G-2-302 is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2f-203;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(m) information provided by an offender that is:

(i) required by the registration requirements of Section 77-27-21.5; and

(ii) not required to be made available to the public under Subsection 77-27-21.5(27); [~~and~~]

(n) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security[~~.~~]; and

(o) electronic toll collection customer account information received or collected under Section 72-6-118, including contact and payment information and customer travel data.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

CHAPTER 86
H. B. 39
Passed February 7, 2011
Approved March 21, 2011
Effective May 10, 2011

WATER RIGHTS AMENDMENTS

Chief Sponsor: Jack R. Draxler
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill addresses water rights applications.

Highlighted Provisions:

This bill:

- eliminates a provision referring to forfeiture of a water right application;
- changes a reference concerning exceptions to application-based priority dates for water rights; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-18, as last amended by Laws of Utah 1959, Chapter 137

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

Section 1. Section 73-3-18 is amended to read:

73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.

(1) When an application lapses for failure of the applicant to comply with [~~the provisions of this title~~] this title's provisions or the state engineer's order [~~of the state engineer~~], notice of [~~such lapsing~~] the lapse shall [~~forthwith~~] promptly be given to the applicant by regular mail.

(2) Within 60 days after [~~such~~] notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.

(3) The original priority date of a lapsed [~~or forfeited~~] application [~~shall~~] may not be reinstated, except upon a showing of fraud or mistake of the state engineer.

(4) The priority of an application shall be determined by the date of receiving the written application in the state engineer's office, except as provided in Section [~~73-3-17~~] 73-3-12 and as [~~herein~~] provided in this section. [~~Prior to~~]

(5) Before issuance of a certificate of appropriation, rights claimed under applications for the appropriation of water may be transferred or assigned by instruments in writing. [~~Such instruments,~~]

(6) An instrument transferring or assigning a right described in Subsection (5), when acknowledged or proved and certified in the manner provided by law for the [~~acknowledgement~~] acknowledgment or proving of conveyances of real estate, may be filed in the office of the state engineer and shall from time of filing [~~of same in said office~~] impart notice to all persons of the contents thereof.

(7) Every assignment of an application [~~which shall not be recorded~~] that is not filed as [~~herein~~] provided [~~shall be~~] by this section is void as against any subsequent assignee in good faith and for valuable consideration of the same application or any portion thereof where [~~his~~] the subsequent assignee's own assignment [~~shall be~~] is first duly [~~recorded~~] filed.

CHAPTER 87
H. B. 44
Passed February 4, 2011
Approved March 21, 2011
Effective May 10, 2011

ITALIAN-AMERICAN HERITAGE MONTH DESIGNATION

Chief Sponsor: Christine F. Watkins
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill designates the month of October as Italian-American Heritage Month in Utah.

Highlighted Provisions:

This bill:

- designates that the month of October shall be commemorated annually as Italian-American Heritage Month in Utah.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-1-401, as last amended by Laws of Utah 2010, Chapter 224

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

Section 1. Section 63G-1-401 is amended to read:

63G-1-401. Commemorative periods.

(1) The following days shall be commemorated yearly:

(a) Bill of Rights Day, on December 15;

(b) Constitution Day, on September 17;

(c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the U.S. armed forces around the world in defense of freedom;

(d) POW/MIA Recognition Day, on the third Friday in September; and

(e) Indigenous People Day, the Monday immediately preceding Thanksgiving.

(2) The Department of Veterans' Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of October shall be commemorated yearly as Italian-American Heritage Month.

[~~(3)~~] (4) The month of November shall be commemorated yearly as American Indian Heritage Month.

[~~(4)~~] (5) The first full week of May shall be commemorated yearly as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

[~~(5)~~] (6) January 24, 2011 shall be commemorated as John M. Browning Day.

CHAPTER 88
H. B. 46
Passed February 18, 2011
Approved March 21, 2011
Effective May 10, 2011

COUNTY RECORDER AMENDMENTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions related to the duties of a county recorder and recording requirements.

Highlighted Provisions:

This bill:

- modifies provisions related to records and indexes;
- modifies provisions related to judgments affecting real estate;
- modifies provisions related to legal description and notarization requirements for a recorded document;
- modifies provisions related to the recording of a release, assignment, renewal, or extension of a judgment lien;
- modifies provisions related to the creation of a joint tenancy;
- modifies provisions related to a boundary line agreement operating as a quitclaim deed;
- modifies provisions related to information included in a document conveying title to real property;
- modifies provisions related to notarization of a judgment, abstract of judgment, or information statement; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-21-6, as last amended by Laws of Utah 2010, Chapter 381
17-21-10, as last amended by Laws of Utah 1999, Chapter 85
17-21-20, as last amended by Laws of Utah 2010, Chapter 381
38-5-1, as last amended by Laws of Utah 2001, Chapter 370
57-1-5, as last amended by Laws of Utah 2010, Chapter 381
57-1-13, as last amended by Laws of Utah 2000, Chapter 75
57-1-45, as enacted by Laws of Utah 2001, Chapter 241
57-3-105, as last amended by Laws of Utah 2008, Chapter 97
57-3-106, as last amended by Laws of Utah 2010, Chapter 381
78B-5-201, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-5-202, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-5-408, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 17-21-6 is amended to read:

17-21-6. General duties of recorder -- Records and indexes.

(1) Each recorder shall:

(a) keep an entry record, in which the recorder shall, upon acceptance and recording of any instrument, enter the instrument in the order of its recording, the names of the parties to the instrument, its date, the hour, the day of the month and the year of recording, and a brief description, and endorse upon each instrument a number corresponding with the number of the entry;

(b) keep a grantors' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of real property, which shall show the entry number of the instrument, the name of each grantor in alphabetical order, the name of the grantee, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(c) keep a grantees' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of real property, which shall show the entry number of the instrument, the name of each grantee in alphabetical order, the name of the grantor, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(d) keep a mortgagors' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagor, debtor, or person charged with the encumbrance in alphabetical order, the name of the mortgagee, lien holder, creditor, or claimant, the date of the instrument, the time of recording, the instrument, consideration, the book and page, and a brief description;

(e) keep a mortgagees' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagee, lien holder, creditor, or claimant, in alphabetical order, the name of the mortgagor or person charged with the encumbrance, the date of the instrument, the time of recording, the kind of instrument, the consideration, the book and page, and a brief description;

(f) subject to Subsection (3), keep a tract index, which shall show by description every instrument recorded, the date and the kind of instrument, the time of recording, and the book and page and entry number;

(g) keep an index of recorded maps, plats, and subdivisions;

(h) keep an index of powers of attorney showing the date and time of recording, the book, the page, and the entry number;

(i) keep a miscellaneous index, in which the recorder shall enter all instruments of a miscellaneous character not otherwise provided for in this section, showing the date of recording, the book, the page, the entry number, the kind of instrument, from, to, and the parties;

(j) keep an index of judgments showing the judgment debtors, the judgment creditors, the amount of judgment, the date and time of recording, the satisfaction, and the book, the page, and the entry number; and

(k) keep a general recording index in which the recorder shall index all executions and writs of attachment, and any other instruments not required by law to be spread upon the records, and in separate columns the recorder shall enter the names of the plaintiffs in the execution and the names of the defendants in the execution.

(2) The recorder shall alphabetically arrange the indexes required by this section and keep a reverse index.

(3) (a) The tract index required by Subsection (1)(f) shall be kept so that it shows a true chain of title to each tract or parcel, together with each encumbrance on the tract or parcel, according to the records of the office.

(b) A recorder shall abstract an instrument in the tract index unless:

(i) the instrument is required to contain a legal description under Section 17-21-20 or Section 57-3-105 and does not contain that legal description; or

(ii) the instrument contains errors, omissions, or defects to the extent that the tract or parcel to which the instrument relates cannot be determined.

(c) If a recorder abstracts an instrument in the tract index or another index required by this section, the recorder may:

(i) use a tax parcel number;

(ii) use a site address;

(iii) reference to other instruments of record recited on the instrument; or

(iv) reference another instrument that is recorded concurrently with the instrument.

(d) A recorder is not required to go beyond the face of an instrument to determine the tract or parcel to which an instrument may relate.

(e) A person may not bring an action against a recorder for injuries or damages suffered as a result of information contained in an instrument recorded in a tract index or other index that is required by this section despite errors, omissions, or defects in the instrument.

(f) The fact that a recorded instrument described in Subsection (3)(e) is included in the tract index does not cure a failure to give public notice caused by an error, omission, or defect.

(g) A document that is indexed in all or part of the indexes required by this section shall give constructive notice.

(4) Nothing in this section prevents the recorder from using a single name index if that index includes all of the indexes required by this section.

Section 2. Section 17-21-10 is amended to read:

17-21-10. Judgments affecting real estate.

[~~The recorder~~] (1) A county recorder shall record for real property, any part of which is located in the county:

(a) a judgment affecting the real [~~estate~~] property;

(b) a release, assignment, renewal, or extension of a judgment lien affecting the real property; or

(c) a certified [~~copies of final judgments or decrees~~] copy of a final judgment or decree partitioning or affecting the title or possession of the real property [~~any part of which is located in the county~~].

(2) A document recorded in accordance with this section is subject to the requirements of Section 57-3-106.

Section 3. Section 17-21-20 is amended to read:

17-21-20. Recording required -- Recorder may impose requirements on documents to be recorded -- Prerequisites -- Additional fee for noncomplying documents -- Recorder may require tax serial number -- Exceptions -- Requirements for recording final local entity plat.

(1) Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required by law to be recorded in the office of the county recorder shall be recorded unless otherwise provided.

(2) Each document executed on or after July 1, 2007, that is submitted for recording to a county recorder's office shall:

(a) unless otherwise provided by law, be an original or certified copy of the document;

(b) be in English or be accompanied by an accurate English translation of the document;

(c) contain a brief title, heading, or caption on the first page stating the nature of the document;

(d) except as otherwise provided by statute, contain the legal description of the property that is the subject of the document;

(e) comply with the requirements of Section 17-21-25 and Subsections 57-3-105(1) and (2);

(f) except as otherwise provided by statute, be notarized with the notary stamp with the seal legible; and

(g) have original signatures.

(3) (a) Beginning September 1, 2007, a county recorder may require that each paper, notice, and instrument submitted for recording in the county recorder's office:

(i) be on white paper that is 8-1/2 inches by 11 inches in size;

(ii) have a margin of one inch on the left and right sides and at the bottom of each page;

(iii) have a space of 2-1/2 inches down and 4-1/2 inches across the upper right corner of the first page and a margin of one inch at the top of each succeeding page;

(iv) not be on sheets of paper that are continuously bound together at the side, top, or bottom;

(v) not contain printed material on more than one side of each page;

(vi) be printed in black ink and not have text smaller than seven lines of text per vertical inch; and

(vii) be sufficiently legible to make certified copies.

(b) A county recorder who intends to establish requirements under Subsection (3)(a) shall first:

(i) provide formal notice of the requirements; and

(ii) establish and publish an effective date for the requirements that is at least three months after the formal notice under Subsection (3)(b)(i).

(c) If a county recorder establishes requirements under this Subsection (3), the county recorder may charge and collect from persons who submit a document for recording that does not comply with the requirements, in addition to any other fee that the county recorder is authorized to charge and collect, a fee that:

(i) is calculated to recover the additional cost of handling and recording noncomplying documents; and

(ii) may not exceed $2 per page.

(4) (a) To facilitate the abstracting of an instrument, a county recorder may require that the applicable tax serial number of each parcel described in the instrument be noted on the instrument before it may be accepted for recording.

(b) If a county recorder requires the applicable tax serial number to be on an instrument before it may be recorded:

(i) the county recorder shall post a notice of that requirement in a conspicuous place at the recorder's office;

(ii) the tax serial number may not be considered to be part of the legal description and may be indicated on the margin of the instrument; and

(iii) an error in the tax serial number does not affect the validity of the instrument or effectiveness of the recording.

(5) Subsections (2), (3), and (4) do not apply to:

(a) a map;

(b) a certificate or affidavit of death;

(c) a military discharge;

(d) a document regarding taxes that is issued by the Internal Revenue Service of the United States Department of the Treasury;

(e) a document submitted for recording that has been filed with a court and conforms to the formatting requirements established by the court; or

(f) a document submitted for recording that is in a form required by law.

(6) (a) As used in this Subsection (6):

(i) "Boundary action" has the same meaning as defined in Section 17-23-20.

(ii) "Local entity" has the same meaning as defined in Section 67-1a-6.5.

(b) A person may not submit to a county recorder for recording a plat depicting the boundary of a local entity as the boundary exists as a result of a boundary action, unless:

(i) the plat has been approved under Section 17-23-20 by the county surveyor as a final local entity plat, as defined in Section 17-23-20; and

(ii) the person also submits for recording:

(A) the original notice of an impending boundary action, as defined in Section 67-1a-6.5, for the boundary action for which the plat is submitted for recording; [~~and~~]

(B) the original applicable certificate, as defined in Section 67-1a-6.5, issued by the lieutenant governor under Section 67-1a-6.5 for the boundary action for which the plat is submitted for recording; and

(C) each other document required by statute to be submitted for recording with the notice of an impending boundary action and applicable certificate.

(c) Promptly after recording the documents described in Subsection (6)(b) relating to a boundary action, but no later than 10 days after recording, the county recorder shall send a copy of all those documents to the State Tax Commission.

Section 4. Section 38-5-1 is amended to read:

38-5-1. Filing with clerk of district court -- Recording with county recorder -- Effect.

(1) [~~Transcripts of judgments or decrees~~] (a) A person may file in the office of the clerk of a state district court a transcript of a judgment or decree rendered in the district court of the United States within the state [~~may be filed in the office of the clerk of the state district court of any county in this state, and when so filed, such judgments or decrees shall have~~].

(b) A decree or judgment filed in accordance with Subsection (1)(a) has the same force and effect as a

judgment rendered in a state district court [~~of this state in and for such county~~].

(2) Except as provided in Subsection (3), if a person records a judgment or an abstract of judgment or decree under Subsection (1) [~~is recorded~~] in the office of the county recorder, that judgment or decree becomes a lien [~~on the real property of the judgment debtor in that county owned or acquired during the time the judgment is effective~~] in accordance with Section 78B-5-202.

(3) [~~State agencies are~~] A state agency is exempt from the recording requirement of Subsection (2).

(4) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (4)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (4)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Section 5. Section 57-1-5 is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.

(1) (a) (i) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established between two or more people.

(iii) Joint tenancy may not be established between a person and an entity or organization, including:

(A) a corporation;

(B) a trustee of a trust; or

(C) a partnership.

(iv) Joint tenancy may not be established between an entity or organization and another entity or organization.

(b) Every ownership interest in real estate that does not qualify for the joint tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.

(b) (i) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import declare a tenancy in common.

(ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in common unless accompanied by joint tenancy language described in Subsection (2)(a), which creates a joint tenancy.

(3) A [~~sole owner of~~] person who owns real property creates a joint tenancy in himself or herself and another or others:

(a) by making a transfer to himself or herself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or another, the joint tenancy is severed and converted into a tenancy in common.

(b) If there is more than one joint tenant remaining after a joint tenant severs a joint tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in joint tenancy.

(6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

(7) Tenants by the entirety are considered to be joint tenants.

(8) Tenants holding title as community property are considered to be joint tenants.

Section 6. Section 57-1-13 is amended to read:

57-1-13. Form of quitclaim deed -- Effect.

[~~Conveyances~~] (1) A conveyance of land may also be substantially in the following form:

"QUITCLAIM DEED

____ (here insert name), grantor, of ____ (insert place of residence), hereby quitclaims to ____ (insert

name), grantee, of ____ (here insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this _____(month\day\year).

A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance."

(2) For a boundary line agreement operating as a quitclaim deed as described in Section 57-1-45, the boundary line agreement shall include, in addition to a legal description of the agreed upon boundary line:

(a) the signature of each grantor;

(b) a sufficient acknowledgment for each grantor's signature; and

(c) the address of each grantee for assessment purposes.

Section 7. Section 57-1-45 is amended to read:

57-1-45. Boundary line agreements.

(1) If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

(2) [~~Each~~] A boundary line agreement [~~under~~] described in Subsection (1) shall [~~contain~~] include:

(a) a legal description of the [~~land conveyed~~] agreed upon boundary line;

(b) the signature of each grantor;

(c) a sufficient acknowledgment for each grantor's signature; and

(d) the address of each grantee for assessment purposes.

Section 8. Section 57-3-105 is amended to read:

57-3-105. Legal description of real property and names and addresses required in documents.

(1) Except as otherwise provided by statute, a person may not present a document for recording unless the document complies with this section.

(2) A document executed after July 1, 1983, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document contains a legal description of the real property.

(3) (a) A document conveying title to real property presented for recording after July 1, 1981, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document [~~contains the names and mailing addresses of the~~] names the grantees and recites a mailing address to be used for assessment and taxation in addition to the legal description required under Subsection (2).

(b) The address of the management committee may be used as the mailing address of a grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest as defined by Section 57-19-2.

(4) A person may not present and a county recorder may refuse to accept a document for recording if the document does not conform to this section.

(5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be recorded in the office of the recorder of the county in which the property described in the master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

Section 9. Section 57-3-106 is amended to read:

57-3-106. Original documents required -- Captions -- Legibility.

(1) A person may not present and a county recorder may refuse to accept a document for recording if the document does not comply with this section.

(2) (a) Unless otherwise provided, a document presented for recording in the office of the county recorder shall:

(i) be an original;

(ii) contain a brief caption on the first page of the document stating the nature of the document; and

(iii) contain a legal description of the property as required under Section 57-3-105.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (2)(a)(ii) shall state that the document is a master form.

(3) A court judgment or an abstract of a court judgment presented for recording in the office of the county recorder in compliance with Section 78B-5-202 shall:

(a) be an original or certified copy; and

(b) include the information identifying the judgment debtor as referred to in Subsection 78B-5-201(4) either:

(i) in the judgment or abstract of judgment; or

(ii) as a separate information statement of the judgment creditor as referred to in Subsection 78B-5-201(5).

(4) A judgment, abstract of judgment, [~~and~~] or separate information statement of the judgment

creditor does not require an acknowledgment [~~or~~], a legal description, or notarization to be recorded.

(5) A foreign judgment or an abstract of a foreign judgment recorded in the office of a county recorder shall include the affidavit as required in Section 78B-5-303.

(6) Any document recorded in the office of the county recorder to release [~~or~~], assign, renew, or extend a judgment lien shall include:

(a) the name of any judgment creditor, debtor, assignor, or assignee;

[~~(b) the date of recording; and~~]

[~~(c) the entry number of the instrument creating the judgment lien.~~]

(b) the date on which the instrument creating the lien was recorded in the office of the county recorder;

(c) the entry number and book and page of the recorded instrument creating the judgment lien; and

(d) the date on which the document is recorded.

(7) A document presented for recording shall be sufficiently legible for the recorder to make certified copies of the document.

(8) (a) (i) A document that is of record in the office of the appropriate county recorder in compliance with this chapter may not be recorded again in that same county recorder's office unless the original document has been reexecuted by all parties who executed the document.

(ii) Unless exempt by statute, an original document that is reexecuted shall contain the appropriate acknowledgment, proof of execution, jurat, or other notarial certification for all parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments.

(iii) A document submitted for rerecording shall contain a brief statement explaining the reason for rerecording.

(b) A person may not present and a county recorder may refuse to accept a document for rerecording if that document does not conform to this section.

(c) This Subsection (8) applies only to documents executed after July 1, 1998.

(9) Minor typographical or clerical errors in a document of record may be corrected by the recording of an affidavit or other appropriate instrument.

(10) (a) Except as required by federal law, or by agreement between a borrower under the trust deed and a grantee under the trustee's deed, and subject to Subsection (10)(b), neither the recordation of an affidavit under Subsection (9) nor the reexecution and rerecording of a document under Subsection (8):

(i) divests a grantee of any real property interest;

(ii) alters an interest in real property; or

(iii) returns to the grantor an interest in real property conveyed by statute.

(b) A person who reexecutes and rerecords a document under Subsection (8), or records an affidavit under Subsection (9), shall include with the document or affidavit a notice containing the name and address to which real property valuation and tax notices shall be mailed.

Section 10. Section 78B-5-201 is amended to read:

78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this part, "Registry of Judgments" means the index where a judgment is filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

(a) the information identifying the judgment debtor on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that contains:

(i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

(ii) the name and address of the judgment creditor;

(iii) the amount of the judgment as filed in the Registry of Judgments;

(iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and

(v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(6) (a) Any judgment that requires payment of money and is entered in a district court on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with Subsections (4) and (5).

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

(i) the name of any judgment creditor, debtor, assignor, or assignee;

[~~(ii) the date of recording; and~~]

[~~(iii) the entry number of the original judgment or abstract of judgment.~~]

(ii) the date on which the judgment was recorded in the office of the county recorder as described in Subsection (4); and

(iii) the county recorder's entry number and book and page of the recorded judgment.

(7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with actual or constructive knowledge of the judgment.

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Liens and Wrongful Judgment Liens.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Section 11. Section 78B-5-202 is amended to read:

78B-5-202. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court may not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit with the court where the notice of appeal is filed of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

(i) within four years after the date the youngest child reaches majority; or

(ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78B-5-201(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Section 12. Section 78B-5-408 is amended to read:

78B-5-408. Judgments and awards on foreign-money claims -- Time of money conversion -- Form of judgment.

(1) Except as provided in Subsection (3), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) The judgment or award is payable in that foreign money or at the option of the debtor in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) Judgments or awards made in an action on both:

(a)a defense, set-off, recoupment, or counterclaim; and

(b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with Subsection (1):

IT IS ADJUDGED AND ORDERED that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 78B-5-410) percent a year or, at the option of the judgment debtor, the number of United States dollars as will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by Subsection 78B-5-406(1) or (2), the judgment or award shall be entered for the amount of the money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars as will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed in the judgment docket and indexed in foreign money in the same manner, and shall have the same effect as a lien as other judgments. It may be discharged by payment.

(9) A person shall record a judgment lien, or assignment, release, renewal, or extension of a judgment lien, in the county recorder's office in accordance with Sections 17-21-10, 38-9-1, 78B-5-201, and 78B-5-202.

CHAPTER 89
H. B. 48
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

FINGERPRINTS OF JUVENILES

Chief Sponsor: Jeremy A. Peterson
Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill requires fingerprints and photographs of juveniles to be taken and stored in specific circumstances.

Highlighted Provisions:

This bill:

- requires fingerprints and photographs of juveniles to be taken when a juvenile age 14 or older is:
  - admitted to a detention facility for an offense that would be a felony if committed by an adult;
  - adjudicated by the juvenile court for an offense that would be a felony or class A misdemeanor if committed by an adult; and
- restricts the distribution of fingerprints and photographs.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-1104, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78A-6-1104 is amended to read:

78A-6-1104. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) [~~Photographs may be taken of a minor~~] The Division of Juvenile Justice Services shall take a photograph and fingerprints of all minors 14 years of age or older who[~~: (a) is taken into custody~~] are admitted to a detention facility operated by the Division of Juvenile Justice Services for the alleged commission of an offense [~~under Sections 78A-6-103, 78A-6-701, and 78A-6-702~~] that would [~~also~~] be [~~an offense~~] a felony if the minor were 18 years of age or older[~~; or~~].

[~~(b) has been determined to be a serious habitual offender for tracking under Section 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services.~~]

[~~(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:~~]

[~~(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older;~~]

[~~(ii) has been determined to be a serious habitual offender for tracking under Section 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services; or~~]

[~~(iii) is required to provide a DNA specimen under Section 53-10-403.~~]

(2) The Juvenile Court shall order a minor 14 years of age or older to have their fingerprints taken at a detention facility operated by the Division of Juvenile Justice Services or a local law enforcement agency if the minor is:

(a) adjudicated for an offense that would be a class A misdemeanor if the minor were 18 years of age or older; or

(b) adjudicated for an offense that would be a felony if the minor were 18 years of age or older and the minor was not admitted to a detention facility operated by the Division of Juvenile Justice Services.

(3) The Juvenile Court shall take a photograph of all minors 14 years of age or older who are adjudicated for an offense that would be a felony or a class A misdemeanor if the minor were 18 years of age or older.

[~~(b)~~] (4) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

[~~(3)~~] (5) HIV testing may be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a child victim.

[~~(4)~~] (6) HIV tests, photographs, and fingerprints may not be taken of a child younger than 14 years of age without the consent of the court.

[~~(5)~~] (7) (a) Photographs taken under this section may be distributed or disbursed to the following individuals or agencies [~~other than state or local law enforcement agencies only when a minor 14 years of age or older is charged with an offense which would be a felony if committed by an adult.~~]:

(i) state and local law enforcement agencies;

(ii) the judiciary; and

(iii) the Division of Juvenile Justice Services.

(b) Fingerprints may be distributed or disbursed to the following individuals or agencies [~~other than state or local law enforcement agencies.~~]:

(i) state and local law enforcement agencies;

(ii) the judiciary;

(iii) the Division of Juvenile Justice Services; and

(iv) agencies participating in the Western Identification Network.

[~~(6)~~] (8) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.

CHAPTER 90
H. B. 64
Passed February 17, 2011
Approved March 21, 2011
Effective May 10, 2011

HUMAN BLOOD PROCUREMENT AND USE

Chief Sponsor: Stephen G. Handy
Senate Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill recodifies, repeals, and amends provisions of the Utah Code relating to the procurement and use of human blood.

Highlighted Provisions:

This bill:

- defines terms;
- deletes obsolete provisions relating to the donation of blood by a person who is 18 years old;
- enacts the Human Blood Act;
- clarifies that the procurement and use of a blood product is considered a service rather than a sale;
- provides that a minor who is at least 16 years old may donate blood to a voluntary, noncompensatory blood donation program if a parent or legal guardian of the minor consents to the donation; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
26-31-101, Utah Code Annotated 1953
26-31-102, Utah Code Annotated 1953
26-31-202, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
26-31-201, (Renumbered from 26-31-1, as enacted by Laws of Utah 1981, Chapter 126)

REPEALS:
15-2-5, as last amended by Laws of Utah 2010, Chapter 378

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

Section 1. Section 26-31-101 is enacted to read:

CHAPTER 31. HUMAN BLOOD ACT

Part 1. General Provisions

26-31-101. Title.

This chapter is known as the "Human Blood Act."

Section 2. Section 26-31-102 is enacted to read:

26-31-102. Definitions.

As used in this chapter:

(1) "Blood" means human blood.

(2) "Blood product" includes:

(a) whole blood;

(b) blood plasma;

(c) a blood derivative;

(d) blood platelets; and

(e) blood clotting agents.

Section 3. Section 26-31-201, which is renumbered from Section 26-31-1 is renumbered and amended to read:

Part 2. Blood Procurement and Use

[~~26-31-1~~]. 26-31-201. Procurement and use of a blood product is a service and not a sale.

The following are considered to be the rendition of a service by each participant and are not considered to be a sale:

(1) the procurement, processing, distribution, or use of [~~whole human blood, plasma, blood products, and blood derivatives~~] a blood product for the purpose of injecting or transfusing [~~them~~] the blood product into the human body [~~together with~~]; and

(2) the process of injecting or transfusing [~~the same shall be construed to be the rendition of a service by every person participating therein and shall not be construed to be a sale~~] a blood product.

Section 4. Section 26-31-202 is enacted to read:

26-31-202. Blood donation by a minor.

A minor who is at least 16 years old may donate blood to a voluntary, noncompensatory blood donation program if a parent or legal guardian of the minor consents to the donation.

Section 5. Repealer.

This bill repeals:

Section 15-2-5, Blood donation by minor.

CHAPTER 91
H. B. 75
Passed March 4, 2011
Approved March 21, 2011
Effective May 10, 2011

DANGEROUS WEAPON AMENDMENTS

Chief Sponsor: Curtis Oda
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies provisions of the Utah Criminal Code regarding the definition of "on or about school premises" as related to the use of a dangerous weapon.

Highlighted Provisions:

This bill:

- modifies the definition of "on or about school premises" as related to:
  - sentencing enhancements for the use of a dangerous weapon; and
  - those locations where a person may not possess a dangerous weapon, firearm, or sawed-off shotgun; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-203.2, as last amended by Laws of Utah 2007, Chapter 339
76-10-505.5, as last amended by Laws of Utah 2003, Chapter 203

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

Section 1. Section 76-3-203.2 is amended to read:

76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

(1) (a) As used in this section [~~and Section 76-10-505.5,~~] "on or about school premises" means [~~any of the following~~]:

(i) (A) in a public or private elementary[~~,~~] or secondary[~~,~~] school; or

(B) on the grounds of any of those schools;

(ii) (A) in a public or private [~~vocational school or postsecondary~~] institution of higher education; or

(B) on the grounds of [~~any of those schools or institutions;~~] a public or private institution of higher education;

[~~(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (1)(a)(i) and (ii);~~]

[~~(iv) in or on the grounds of a preschool or child-care facility; and~~]

[~~(v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i), (ii), (iii), and (iv).~~]

(iii) within 1,000 feet of any school, institution, or grounds included in Subsections (1)(a)(i) and (ii); and

(iv) in or on the grounds of a preschool or child care facility.

(b) As used in this section:

(i) "Dangerous weapon" has the same definition as in Section 76-1-601.

(ii) "Educator" means [~~any~~] a person who is:

(A) employed by a public school district; and [~~who is~~]

(B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

(iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.

(2) [~~Any~~] A person who, on or about school premises, commits [~~any~~] an offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).

(3) (a) [~~Any~~] A person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).

(b) As used in Subsection (3)(a), "offense" means:

(i) an offense under Title 76, Chapter 5, Offenses Against the Person; and

(ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

(4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits [~~any~~] an offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of [~~his~~] the educator's employment, the enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony; or

(d) second degree felony is a first degree felony.

(5) The enhanced penalty for a first degree felony offense of a convicted person:

(a) is imprisonment for a term of not less than five years and which may be for life, and imposition or

execution of the sentence may not be suspended unless the court finds that the interests of justice would be best served and states the specific circumstances justifying the disposition on the record; and

(b) is subject also to the dangerous weapon enhancement provided in Section 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a firearm.

(6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).

(7) In cases where an offense is enhanced [~~pursuant to~~] under Subsection (4)[~~(a), (b), (c), or (d)~~], or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section 76-3-203.8.

(8) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping[~~,~~] under Section 76-5-301.1;

(iii) aggravated kidnapping[~~,~~] under Section 76-5-302; or

(iv) forcible sexual abuse[~~,~~] under Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 2. Section 76-10-505.5 is amended to read:

76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises -- Penalties.

(1) As used in this section, "on or about school premises" means:

(a) (i) in a public or private elementary or secondary school; or

(ii) on the grounds of any of those schools;

(b) (i) in a public or private institution of higher education; or

(ii) on the grounds of a public or private institution of higher education; and

(iii) (A) inside the building where a preschool or child care is being held, if the entire building is being used for the operation of the preschool or child care; or

(B) if only a portion of a building is being used to operate a preschool or child care, in that room or rooms where the preschool or child care operation is being held.

[~~(1)~~] (2) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, as those terms are defined in Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on or about school premises as defined in [~~Subsection 76-3-203.2(1)~~] this section.

[~~(2)~~] (3) (a) Possession of a dangerous weapon on or about school premises is a class B misdemeanor.

(b) Possession of a firearm or sawed-off shotgun on or about school premises is a class A misdemeanor.

[~~(3)~~] (4) This section does not apply if:

(a) the person is authorized to possess a firearm as provided under Section 53-5-704, 53-5-705, 76-10-511, or 76-10-523, or as otherwise authorized by law;

(b) the possession is approved by the responsible school administrator;

(c) the item is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use; or

(d) the possession is:

(i) at the person's place of residence or on the person's property; or

(ii) in any vehicle lawfully under the person's control, other than a vehicle owned by the school or used by the school to transport students[~~; or~~].

[~~(iii) at the person's place of business which is not located in the areas described in Subsection 76-3-203.2(1)(a)(i), (ii), or (iv).~~]

[~~(4)~~] (5) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises.

CHAPTER 92
H. B. 78
Passed February 25, 2011
Approved March 21, 2011
Effective May 10, 2011

DEVELOPER FEES

Chief Sponsor: Michael T. Morley
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends provisions related to municipal or county land use authority.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions related to certain fees a municipality or a county may charge;
- requires a municipality or a county to establish a fee appeal process;
- enacts provisions related to a provider of culinary or secondary water that commits to provide a water service required by a public land use application;
- amends provisions related to a municipal or a county appeal authority; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
10-9a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330
10-9a-510, as last amended by Laws of Utah 2010, Chapter 203
10-9a-701, as enacted by Laws of Utah 2005, Chapter 254
17-27a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
17-27a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330
17-27a-509, as last amended by Laws of Utah 2010, Chapter 203
17-27a-701, as enacted by Laws of Utah 2005, Chapter 254

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

Section 1. Section 10-9a-103 is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (10)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (10)(a)(i).

(11) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(15) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(17) "Identical plans" means building plans submitted to a municipality that:

(a) are clearly marked as "identical plans";

(b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and

(c) describe a building that [~~is~~]:

[~~(a)~~] (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located; [~~and~~]

[~~(b)~~] (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans[~~.~~];

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

(19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(21) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(22) "Land use application" means an application required by a municipality's land use ordinance.

(23) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(24) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(25) "Land use permit" means a permit issued by a land use authority.

(26) "Legislative body" means the municipal council.

(27) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(28) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(29) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(31) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(32) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(33) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

(34) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(35) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

(36) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(37) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the

potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(38) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(39) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(40) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(41) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(42) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(43) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

(44) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(45) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(46) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(47) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(48) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(49) "State" includes any department, division, or agency of the state.

(50) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(51) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (51)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(v) a bona fide division or partition of land by deed or other instrument where the land use authority

expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (51) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(52) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(53) "Unincorporated" means the area outside of the incorporated area of a city or town.

(54) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(55) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-305 is amended to read:

10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a municipality located within the boundaries of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from municipal land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A municipality located within the boundaries of a county of the first class may not, through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the municipality prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a municipality's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a municipality may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a municipality may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality may deny or

withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, municipal building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee [~~listed in Subsection 10-9a-510(5)~~] described in Section 10-9a-510;

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 10-9a-304.

Section 3. Section 10-9a-510 is amended to read:

10-9a-510. Limit on fees -- Requirement to itemize fees -- Appeal of fee -- Provider of culinary or secondary water.

(1) A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the municipality charges for a building permit fee for that building.

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal fee for reviewing and approving identical floor plans.

(3) A municipality may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the municipal water, sewer, storm water, power, or other utility system.

(4) A municipality may not impose or collect:

(a) a land use application fee that exceeds the reasonable cost of processing the application or issuing the permit; or

(b) an inspection, regulation, or review fee that exceeds the reasonable cost of performing the inspection, regulation, or review.

(5) (a) [~~Upon the request of~~] If requested by an applicant who is charged a fee or an owner of residential property upon which a fee is imposed, the municipality shall [~~itemize each fee that the municipality imposes on the applicant or on the residential property, respectively, showing the basis of each calculation for each fee imposed~~] provide an itemized fee statement that shows the calculation method for each fee.

(b) If an applicant who is charged a fee or an owner of residential property upon which a fee is imposed submits a request for an itemized fee statement no later than 30 days after the day on which the applicant or owner pays the fee, the municipality shall no later than 10 days after the day on which the request is received provide or commit to provide within a specific time:

(i) for each fee, any studies, reports, or methods relied upon by the municipality to create the calculation method described in Subsection (5)(a);

(ii) an accounting of each fee paid;

(iii) how each fee will be distributed; and

(iv) information on filing a fee appeal through the process described in Subsection (5)(c).

(c) A municipality shall establish a fee appeal process subject to an appeal authority described in Part 7, Appeal Authority and Variances, and district court review in accordance with Part 8, District Court Review, to determine whether a fee reflects only the reasonable estimated cost of:

(i) regulation;

(ii) processing an application;

(iii) issuing a permit; or

(iv) delivering the service for which the applicant or owner paid the fee.

(6) A municipality may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

(7) A provider of culinary or secondary water that commits to provide a water service required by a land use application process is subject to the following as if it were a municipality:

(a) Subsections (5) and (6);

(b) Section 10-9a-508; and

(c) Section 10-9a-509.5.

Section 4. Section 10-9a-701 is amended to read:

10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances; [~~and~~]

(b) appeals from decisions applying the land use ordinances[~~.~~]; and

(c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a municipality may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

(b) provide each of its members with the same information and access to municipal resources as any other member;

(c) convene only if a quorum of its members is present; and

(d) act only upon the vote of a majority of its convened members.

Section 5. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is

not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (11)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (11)(a)(i).

(12) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(13) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(14) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(16) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

(17) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(18) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(19) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

(20) "Identical plans" means building plans submitted to a county that:

(a) are clearly marked as "identical plans";

(b) are substantially identical building plans that were previously submitted to and reviewed and approved by the county; and

(c) describe a building that [~~is~~]:

[~~(a)~~] (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located; [~~and~~]

[~~(b)~~] (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans[~~.~~];

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the county; and

(iv) does not require any additional engineering or analysis.

(21) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

(22) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(23) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(24) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(25) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) "Land use application" means an application required by a county's land use ordinance.

(27) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(28) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

(29) "Land use permit" means a permit issued by a land use authority.

(30) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(31) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(32) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(33) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(35) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback,

height restrictions, or other regulations, excluding those regulations that govern the use of land.

(36) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(37) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

(38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(39) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

(40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

(41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(43) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(45) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(46) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(47) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

(48) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(49) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(50) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

(51) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(52) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(53) "State" includes any department, division, or agency of the state.

(54) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(55) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (55) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(56) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

(57) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

(58) "Unincorporated" means the area outside of the incorporated area of a municipality.

(59) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(60) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 6. Section 17-27a-305 is amended to read:

17-27a-305. Other entities required to conform to county's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or

otherwise using any area, land, or building situated within the unincorporated portion of the county.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from county land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A county of the first class may not, through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties; or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(3) (a) Except as provided in Subsection (4), a school district or charter school is subject to a county's land use ordinances.

(b) (i) Notwithstanding Subsection (4), a county may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a county may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and county building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a county.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the county.

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a county official with authority to issue the certificate, if the school district or charter school used a county building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any county requirement for an inspection or a certificate of occupancy.

(9) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee [~~listed in Subsection 17-27a-509(5)~~] described in Section 17-27a-509;

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (9)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (9)(a)(ii) in the process of preparing the budget for the development.

(10) Nothing in this section may be construed to modify or supersede Section 17-27a-304.

Section 7. Section 17-27a-509 is amended to read:

17-27a-509. Limit on fees -- Requirement to itemize fees -- Appeal of fee -- Provider of culinary or secondary water.

(1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the county charges for a building permit fee for that building.

(2) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical floor plans.

(3) A county may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county water, sewer, storm water, power, or other utility system.

(4) A county may not impose or collect:

(a) a land use application fee that exceeds the reasonable cost of processing the application or issuing the permit; or

(b) an inspection, regulation, or review fee that exceeds the reasonable cost of performing the inspection, regulation, or review.

(5) (a) [~~Upon the request of~~] If requested by an applicant who is charged a fee or an owner of residential property upon which a fee is imposed, the county shall [~~itemize each fee that the county imposes on the applicant or on the residential property, respectively, showing the basis of each calculation for each fee imposed~~] provide an itemized fee statement that shows the calculation method for each fee.

(b) If an applicant who is charged a fee or an owner of residential property upon which a fee is imposed submits a request for an itemized fee statement no later than 30 days after the day on which the applicant or owner pays the fee, the county shall no later than 10 days after the day on which the request is received provide or commit to provide within a specific time:

(i) for each fee, any studies, reports, or methods relied upon by the county to create the calculation method described in Subsection (5)(a);

(ii) an accounting of each fee paid;

(iii) how each fee will be distributed; and

(iv) information on filing a fee appeal through the process described in Subsection (5)(c).

(c) A county shall establish a fee appeal process subject to an appeal authority described in Part 7, Appeal Authority and Variances, and district court review in accordance with Part 8, District Court Review, to determine whether a fee reflects only the reasonable estimated cost of:

(i) regulation;

(ii) processing an application;

(iii) issuing a permit; or

(iv) delivering the service for which the applicant or owner paid the fee.

(6) A county may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

(7) A provider of culinary or secondary water that commits to provide a water service required by a land use application process is subject to the following as if it were a county:

(a) Subsections (5) and (6);

(b) Section 17-27a-507; and

(c) Section 17-27a-509.5.

Section 8. Section 17-27a-701 is amended to read:

17-27a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

(1) Each county adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances; [~~and~~]

(b) appeals from decisions applying the land use ordinances[~~.~~]; and

(c) appeals from a fee charged in accordance with Section 17-27a-509.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and

specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a county may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the county establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

(b) provide each of its members with the same information and access to municipal resources as any other member;

(c) convene only if a quorum of its members is present; and

(d) act only upon the vote of a majority of its convened members.

CHAPTER 93
H. B. 153
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

COUNTY CORRECTIONAL FACILITIES FUNDING AMENDMENTS

Chief Sponsor: Michael E. Noel
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends provisions of Title 64, Chapter 13e, State Payment and Reimbursement to County Correctional Facilities, relating to determining the actual state daily incarceration rate and the compensation rate for housing state inmates pursuant to a contract.

Highlighted Provisions:

This bill:

- defines terms;
- provides that the compensation rate for housing state inmates pursuant to a contract shall be:
  - 73% of the final state daily incarceration rate for beds in a county that, pursuant to the contract, are dedicated to a treatment program to state inmates, if the treatment program is approved by the Department of Corrections; and
  - 70% of the final state daily incarceration rate for beds in a county that are not described in the preceding paragraph;
- grants rulemaking authority to the Department of Corrections;
- describes the criteria for approving a treatment program; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

64-13e-102, as last amended by Laws of Utah 2009, Chapter 56
64-13e-103, as last amended by Laws of Utah 2008, Chapter 188

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

Section 1. Section 64-13e-102 is amended to read:

64-13e-102. Definitions.

As used in this chapter:

(1) "Actual state daily incarceration rate" means the daily incarceration rate that reflects the actual expenses of the department, including:

(a) executive overhead;

(b) administrative overhead;

(c) transportation overhead;

(d) division overhead;

(e) motor pool expenses;

(f) medical expenses;

(g) mental health expenses;

(h) dental expenses; [~~and~~]

(i) straight line capital depreciation, over a 40-year period, for prison facilities of the department[~~.~~]; and

(j) expenses for treatment, including substance abuse treatment, alcohol abuse treatment, and sex offender treatment.

(2) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in Section 63M-7-201.

(3) "Department" means the Department of Corrections.

(4) "Division of Finance" means the Division of Finance, created in Section 63A-3-101.

(5) "Final state daily incarceration rate" means the average actual state daily incarceration rate, calculated, reviewed, and discussed under Section 64-13e-105, and approved by the Legislature under Subsection 64-13e-105(3).

(6) "State inmate" means a person, other than a state probationary inmate or state parole inmate, who is committed to the custody of the department.

(7) "State parole inmate" means a person who is:

(a) on parole, as defined in Section 77-27-1; and

(b) housed in a county jail for a reason related to the person's parole.

(8) "State probationary inmate" means a felony probationer sentenced to time in a county jail under Subsection 77-18-1(8).

(9) "Treatment program" means:

(a) an alcohol treatment program;

(b) a substance abuse treatment program; or

(c) a sex offender treatment program.

Section 2. Section 64-13e-103 is amended to read:

64-13e-103. Contracts for housing state inmates.

(1) Subject to Subsection (6), the department may contract with a county to house state inmates in a county or other correctional facility.

(2) The department shall give preference for placement of state inmates, over private entities, to county correctional facility bed spaces for which the department has contracted under Subsection (1).

(3) (a) The compensation rate for housing state inmates pursuant to a contract described in Subsection (1) shall be [~~70% of the final state daily incarceration rate.~~]:

(i) 73% of the final state daily incarceration rate for beds in a county that, pursuant to the contract,

are dedicated to a treatment program to state inmates, if the treatment program is approved by the department under Subsection (3)(c); and

(ii) 70% of the final state daily incarceration rate for beds in a county other than the beds described in Subsection (3)(a)(i).

(b) The department shall:

(i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish standards that a treatment program is required to meet before the treatment program is considered for approval for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i); and

(ii) determine on an annual basis, based on appropriations made by the Legislature for the contracts described in this section, whether to approve a treatment program that meets the standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i).

(c) The department may not approve a treatment program for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i), unless:

(i) the program meets the standards established under Subsection (3)(b)(i);

(ii) the department determines that the Legislature has appropriated sufficient funds to:

(A) pay the county that provides the treatment program at the rate described in Subsection (3)(a)(i); and

(B) pay each county that does not provide a treatment program an amount per state inmate that is not less than the amount per state inmate received for the preceding fiscal year by a county that did not provide a treatment program; and

(iii) the department determines that the treatment program is needed by the department at the location where the treatment program will be provided.

(4) Compensation to a county for state inmates incarcerated under this section shall be made by the department.

(5) Counties that contract with the department under Subsection (1) shall, on or before June 30 of each year, submit a report to the department that includes:

(a) the number of state inmates the county housed under this section; and

(b) the total number of state inmate days of incarceration that were provided by the county.

(6) Except as provided under Subsection (7), the department may not enter into a contract described under Subsection (1), unless the Legislature has previously passed a joint resolution that includes the following information regarding the proposed contract:

(a) the approximate number of beds to be contracted;

(b) the final state daily incarceration rate;

(c) the approximate amount of the county's long-term debt; and

(d) the repayment time of the debt for the facility where the inmates are to be housed.

(7) The department may enter into a contract with a county government to house inmates without complying with the approval process described in Subsection (6) only if the county facility was under construction, or already in existence, on March 16, 2001.

(8) Any resolution passed by the Legislature under Subsection (6) does not bind or obligate the Legislature or the department regarding the proposed contract.

CHAPTER 94
H. B. 172
Passed March 3, 2011
Approved March 21, 2011
Effective May 10, 2011

SERVICE ANIMAL AMENDMENTS

Chief Sponsor: Keith Grover
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends the Rights and Privileges of a Person with a Disability Act by changing the definition of a "service animal."

Highlighted Provisions:

This bill:

- amends the definition of a "service animal" to follow the federal definition; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-5b-102, as last amended by Laws of Utah 2009, Chapter 110

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

Section 1. Section 62A-5b-102 is amended to read:

62A-5b-102. Definitions.

As used in this chapter:

(1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the Code of Federal Regulations, as may be amended in the future.

(2) "Restaurant":

(a) includes any coffee shop, cafeteria, luncheonette, soda fountain, dining room, or fast-food service where food is prepared or served for immediate consumption; and

(b) does not include:

(i) any retail establishment whose primary business or function is the sale of fuel or food items for off-premise, but not immediate, consumption; and

(ii) except for a dinner theater, a theater that sells food items.

[~~(3) "Service animal" means:~~]

[~~(a) (i) a guide dog;~~]

[~~(ii) a signal dog; or~~]

[~~(iii) any other animal individually trained to do work or perform tasks for the benefit of a person with a disability, including:~~]

[~~(A) guiding a person with impaired vision;~~]

[~~(B) alerting a person with impaired hearing to intruders or sounds;~~]

[~~(C) providing minimal protection or rescue work;~~]

[~~(D) pulling a wheelchair; or~~]

[~~(E) fetching dropped items; or~~]

[~~(b) an animal in training to become an animal described in Subsection (3)(a).~~]

(3) (a) "Service animal" includes any dog that:

(i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability;

(ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including:

(A) assisting an individual who is blind or has low vision with navigation or other tasks;

(B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;

(C) providing non-violent protection or rescue work;

(D) pulling a wheelchair;

(E) assisting an individual during a seizure;

(F) alerting an individual to the presence of an allergen;

(G) retrieving an item for the individual;

(H) providing physical support and assistance with balance and stability to an individual with a mobility disability; or

(I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.

(b) "Service animal" does not include:

(i) an animal other than a dog, whether wild or domestic, trained or untrained; or

(ii) an animal used solely to provide:

(A) a crime deterrent;

(B) emotional support;

(C) well-being;

(D) comfort; or

(E) companionship.

CHAPTER 95
H. B. 175
Passed March 1, 2011
Approved March 21, 2011
Effective May 10, 2011

CONDOMINIUM OWNERSHIP ACT MODIFICATIONS

Chief Sponsor: Ryan D. Wilcox
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Condominium Ownership Act.

Highlighted Provisions:

This bill:

- modifies requirements relating to the keeping and availability of condominium records; and
- makes those requirements apply, during the period of declarant control, to the declarant or other selected by the declarant.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-17, as enacted by Laws of Utah 1963, Chapter 111

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

Section 1. Section 57-8-17 is amended to read:

57-8-17. Records of receipts and expenditures -- Availability for examination.

(1) As used in this section, "management committee" includes, during the period of control described in Subsection 57-8-16.5(1):

(a) the declarant; or

(b) the managing agent or other person selected by the declarant to exercise powers and responsibilities otherwise assigned by the declaration or this chapter to the unit owners' association, its officers, or the management committee, if the declarant has selected a managing agent or other person to exercise those powers and responsibilities.

(2) The manager or management committee shall:

(a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred[~~. Records and the vouchers authorizing the payments involved shall be~~]; and

(b) make those records available for examination by [~~the~~] any unit [~~owners~~] owner at convenient hours of weekdays no later than 14 days after the unit owner makes a written request to examine the records.

CHAPTER 96
H. B. 201
Passed February 17, 2011
Approved March 21, 2011
Effective May 10, 2011

TOBACCO LICENSING AMENDMENTS

Chief Sponsor: Paul Ray
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code and the Cigarette and Tobacco Tax and Licensing Act relating to tobacco licensing.

Highlighted Provisions:

This bill:

- amends license revocation provisions to provide that the revocation of a license to sell tobacco is in effect for one year after:
  - the day on which the time for filing an appeal of the revocation ends; or
  - if the revocation is appealed, the day on which the decision to uphold the revocation becomes final;
- provides that manufacturers and distributors of tobacco products who are responsible for the collection of tax on tobacco products, and all retailers of tobacco products, are subject to the licensing requirements, procedures, and penalties described in Title 59, Chapter 14, Part 2, Cigarette and Tobacco Tax and Licensing Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-42-103, as enacted by Laws of Utah 1998, Chapter 319
59-14-203.5, as enacted by Laws of Utah 1998, Chapter 319
59-14-301, as last amended by Laws of Utah 1998, Chapter 319
59-14-301.5, as enacted by Laws of Utah 1998, Chapter 319

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

Section 1. Section 26-42-103 is amended to read:

26-42-103. Violations and penalties -- Imposition by enforcing agency and tax commission.

(1) If, following an investigation or issuance of a citation or information under Section 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee the following administrative penalties:

(a) upon the first violation, a penalty of not more than $300;

(b) upon a second violation at the same retail location, and within 12 months of the first violation, a penalty of not more than $750; and

(c) upon a third or subsequent violation at the same retail location and within 12 months of the first violation, a penalty of not more than $1,000.

(2) The enforcing agency shall notify the commission in writing of any order or order of default finding a violation of Subsection (1) which is a third or fourth violation.

(3) The commission, upon receipt of the written notification under Subsection (2), shall take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:

(a) by suspending the licensee's license to sell tobacco at that location for not more than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

(b) by revoking the license to sell tobacco at that location held by the licensee, including any license under suspension, upon receipt of notification of a fourth violation under Subsection (1)(c).

(4) When the commission revokes a license under Subsection (3)(b), the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section [~~59-14-201~~] 59-14-202 or 59-14-301 to sell tobacco at the location for which the license was issued for one year after [~~the date of the violation for which the license was revoked.~~]:

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

(5) This section does not prevent any bona fide purchaser of the business, who is not a sole proprietor, director, corporate officer, or partner or other holder of significant interest in the entity selling the business, from immediately applying for and obtaining a license to sell tobacco.

Section 2. Section 59-14-203.5 is amended to read:

59-14-203.5. Commission action to suspend or revoke license.

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section 26-42-103 regarding suspension or revocation of a license due to the sale of cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's finding of a violation of Section 26-42-103.

(b) The commission shall provide written notice of the suspension or revocation to the licensee.

(2) It is the duty of the enforcing agency to advise the commission of any finding of a violation of

Section 26-42-103 for which suspension or revocation of the license is a penalty.

(3) When the commission revokes a licensee's license under this section the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for which the license was issued for one year after [~~the date of the violation for which the license was revoked.~~]:

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

Section 3. Section 59-14-301 is amended to read:

59-14-301. Registration and licensing -- Fee -- Bond exceptions.

(1) All manufacturers and distributors of all tobacco products, as defined in Section 59-14-102, who are responsible for the collection of tax on tobacco products under this chapter, and all retailers of all tobacco products [~~shall~~]:

(a) shall register with the commission; [~~and~~]

(b) shall be licensed by the commission under [~~Section 59-14-202.~~] Part 2, Cigarettes; and

(c) are subject to the requirements, procedures, and penalties described in Part 2, Cigarettes.

(2) A fee may not be charged for registration and licensing of manufacturers, jobbers, distributors, or retailers of tobacco products in addition to the cigarette license if such a license is required.

(3) The commission shall require any manufacturer, wholesaler, retailer, or any other person subject to this section, and who is responsible for the collection of tax on tobacco products under this chapter, to post a bond as a prerequisite to registering. The bond shall be in a form and an amount determined by the commission. If the bond is required under Section 59-14-201, the bond may be a combination, the minimum amount of which shall be $1,000.

Section 4. Section 59-14-301.5 is amended to read:

59-14-301.5. Commission action to suspend or revoke license.

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section 26-42-103 regarding suspension or revocation of a license due to the sale of tobacco products to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's order or order of default, finding a violation of Section 26-42-103.

(b) The commission shall provide written notice of the suspension or revocation to the licensee.

(2) It is the duty of the enforcing agency to advise the commission of any order or order of default finding a violation of Section 26-42-103, for which suspension or revocation of the license is a penalty.

(3) When the commission revokes a licensee's license under this section the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for which the license was issued for one year after [~~the date of the violation for which the license was revoked.~~]:

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

CHAPTER 97
H. B. 204
Passed March 1, 2011
Approved March 21, 2011
Effective May 10, 2011

PROTECTION OF ATHLETES WITH HEAD INJURIES

Chief Sponsor: Paul Ray
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill enacts the Protection of Athletes With Head Injuries Act within the Utah Health Code.

Highlighted Provisions:

This bill:

- defines terms;
- requires an amateur sports organization to:
  - adopt and enforce a concussion and head injury policy; and
  - inform a parent or legal guardian of the policy and obtain the parent's or legal guardian's signature on the policy before permitting a child to participate in a sporting event;
- describes the requirements of a concussion and head injury policy;
- requires removal of a child from a sporting event when the child is suspected of sustaining a concussion or traumatic head injury; and
- prohibits a child described in the preceding paragraph from participating in a sporting event of the amateur sports organization until the child receives medical clearance from a qualified health care provider trained in the evaluation and management of a concussion.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
26-53-101, Utah Code Annotated 1953
26-53-102, Utah Code Annotated 1953
26-53-201, Utah Code Annotated 1953
26-53-301, Utah Code Annotated 1953

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

Section 1. Section 26-53-101 is enacted to read:

CHAPTER 53. PROTECTION OF ATHLETES WITH HEAD INJURIES ACT

Part 1. General Provisions

26-53-101. Title.

This chapter is known as the "Protection of Athletes With Head Injuries Act."

Section 2. Section 26-53-102 is enacted to read:

26-53-102. Definitions.

As used in this chapter:

(1) "Agent" means a coach, teacher, employee, representative, or volunteer.

(2) (a) "Amateur sports organization" means, except as provided in Subsection (2)(b):

(i) a sports team;

(ii) a public or private school;

(iii) a public or private sports league;

(iv) a public or private sports camp; or

(v) any other public or private organization that organizes, operates, manages, or sponsors a sporting event for its members, enrollees, or attendees.

(b) "Amateur sports organization" does not include a professional:

(i) team;

(ii) league; or

(iii) sporting event.

(3) "Child" means an individual who is under the age of 18.

(4) "Qualified health care provider" means a health care provider who:

(a) is licensed under Title 58, Occupations and Professions; and

(b) may evaluate and manage a concussion within the health care provider's scope of practice.

(5) (a) "Sporting event" means any of the following athletic activities that is organized, operated, managed, or sponsored by an organization:

(i) a game;

(ii) a practice;

(iii) a sports camp;

(iv) a physical education class;

(v) a competition; or

(vi) a tryout.

(b) "Sporting event" does not include the issuance of a lift ticket or pass by a ski resort, the use of the ticket or pass, or a ski or snowboarding class or school at a ski resort, unless the skiing or snowboarding is part of a camp, team, or competition that is organized, managed, or sponsored by the ski resort.

(6) "Traumatic head injury" means an injury to the head arising from blunt trauma, an acceleration force, or a deceleration force, with one of the following observed or self-reported conditions attributable to the injury:

(a) transient confusion, disorientation, or impaired consciousness;

(b) dysfunction of memory;

(c) loss of consciousness; or

(d) signs of other neurological or neuropsychological dysfunction, including:

(i) seizures;

(ii) irritability;

(iii) lethargy;

(iv) vomiting;

(v) headache;

(vi) dizziness; or

(vii) fatigue.

Section 3. Section 26-53-201 is enacted to read:

Part 2. Concussion and Head Injury Policy

26-53-201. Adoption and enforcement of concussion and head injury policy -- Notice of policy to parent or guardian.

Each amateur sports organization shall:

(1) adopt and enforce a concussion and head injury policy that:

(a) is consistent with the requirements of Section 26-53-301; and

(b) describes the nature and risk of:

(i) a concussion or a traumatic head injury; and

(ii) continuing to participate in a sporting event after sustaining a concussion or a traumatic head injury;

(2) ensure that each agent of the amateur sports organization is familiar with, and has a copy of, the concussion and head injury policy; and

(3) before permitting a child to participate in a sporting event of the amateur sports organization:

(a) provide a written copy of the concussion and head injury policy to a parent or legal guardian of a child; and

(b) obtain the signature of a parent or legal guardian of the child, acknowledging that the parent or legal guardian has read, understands, and agrees to abide by, the concussion and head injury policy.

Section 4. Section 26-53-301 is enacted to read:

Part 3. Medical Clearance

26-53-301. Removal of child suspected of sustaining concussion or a traumatic head injury -- Medical clearance required before return to participation.

(1) An amateur sports organization, and each agent of the amateur sports organization, shall:

(a) immediately remove a child from participating in a sporting event of the amateur sports organization if the child is suspected of sustaining a concussion or a traumatic head injury; and

(b) prohibit the child described in Subsection (1)(a) from participating in a sporting event of the amateur sports organization until the child:

(i) is evaluated by a qualified health care provider who is trained in the evaluation and management of a concussion; and

(ii) provides the amateur sports organization with a written statement from the qualified health care provider described in Subsection (1)(b)(i) stating that:

(A) the qualified health care provider has, within three years before the day on which the written statement is made, successfully completed a continuing education course in the evaluation and management of a concussion; and

(B) the child is cleared to resume participation in the sporting event of the amateur sports organization.

(2) This section does not create a new cause of action.

CHAPTER 98
H. B. 207
Passed February 17, 2011
Approved March 21, 2011
Effective May 10, 2011

JUVENILE AMENDMENTS

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends the Juvenile Court Act of 1996 in relation to identifying the responsibilities of a parent in a child and family plan.

Highlighted Provisions:

This bill:

- gives the court the option to identify verbally or in writing the responsibilities of a parent under a child and family plan; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-312, as last amended by Laws of Utah 2010, Chapter 322

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

Section 1. Section 78A-6-312 is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(A) establish a primary permanency goal for the minor; and

(B) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsection (3).

(ii) Subject to Subsection (2)(b), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(B) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

(A) protect the physical safety of the minor;

(B) protect the life of the minor; or

(C) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based solely on a parent's failure to:

(A) prove that the parent has not used legal or illegal substances; or

(B) comply with an aspect of the child and family plan that is ordered by the court.

(c) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

(A) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

(B) an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

(iii) (A) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(B) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(C) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(I) 30 days after the day on which the court makes the determination described in this Subsection (2)(c)(iii)(C); or

(II) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(d) (i) (A) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall:

(A) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(B) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(C) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (2)(d)(ii)(B), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(iii) (A) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

(B) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(iv) If reunification services are ordered, the court may terminate those services at any time.

(v) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(A) place the minor in accordance with the permanency plan; and

(B) complete whatever steps are necessary to finalize the permanent placement of the minor.

(e) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(d) does not interrupt the running of the period.

(f) (i) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(ii) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(iii) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(g) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

(ii) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.

(h) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(i) the court shall terminate reunification services; and

(ii) the division shall petition the court for termination of parental rights.

(i) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

(i) practicable; and

(ii) in accordance with the best interest of the minor.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

(d) (i) There is a presumption that reunification services should not be provided to a parent if the

court finds, by clear and convincing evidence, that any of the following circumstances exist:

(A) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(C) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(I) was removed from the custody of the minor's parent;

(II) was subsequently returned to the custody of the parent; and

(III) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(D) the parent:

(I) caused the death of another minor through abuse or neglect; or

(II) committed, aided, abetted, attempted, conspired, or solicited to commit:

(Aa) murder or manslaughter of a child; or

(Bb) child abuse homicide;

(E) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(F) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

(G) the parent's rights are terminated with regard to any other minor;

(H) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(I) the parent has abandoned the minor for a period of six months or longer;

(J) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located; or

(K) any other circumstance that the court determines should preclude reunification efforts or services.

(ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(4) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(5) (a) If reunification services are not ordered pursuant to Subsection (3), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsection (2) are not tolled by the parent's absence.

(6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (6)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitation imposed in Subsection (2).

(d) Reunification services for an institutionalized parent are subject to the time limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the minor's best interest.

(7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

CHAPTER 99
H. B. 214
Passed February 17, 2011
Approved March 21, 2011
Effective May 10, 2011

CONCEALED FIREARM PERMIT FEES

Chief Sponsor: Curtis Oda
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill amends the permit fees provision of the Concealed Firearm Act.

Highlighted Provisions:

This bill:

- reduces the initial fee charged for a concealed firearm permit by $5.25, while increasing the renewal fee by $5; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-5-707, as last amended by Laws of Utah 2010, Chapter 62

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

Section 1. Section 53-5-707 is amended to read:

53-5-707. Concealed firearm permit -- Fees -- Disposition.

(1) (a) Each applicant for a concealed firearm permit shall pay a fee of [~~$35~~] $29.75 at the time of filing an application.

(b) The bureau shall wave the initial fee [~~shall be waived~~] for an applicant who is a law enforcement officer under Section 53-13-103.

(2) The renewal fee for the permit is [~~$10~~] $15.

(3) The replacement fee for the permit is $10.

(4) (a) The late fee for the renewal permit is $7.50.

(b) As used in this section, "late fee" means the fee charged by the bureau for a renewal submitted on a permit that has been expired for more than 30 days but less than one year.

(5) The bureau shall use the fees collected under Subsections (1), (2), (3), and (4) as a dedicated credit to cover the costs of issuing concealed firearm permits under this part.

(6) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau shall promptly forward any fees collected under Subsection (6)(a) to the appropriate agency.

(7) The bureau shall make an annual report to the Legislature's Law Enforcement and Criminal Justice Interim Committee on the amount and use of the fees collected under this section.

CHAPTER 100
H. B. 226
Passed March 7, 2011
Approved March 21, 2011
Effective May 10, 2011

LOCAL GOVERNMENT FEE AUTHORITY

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Curtis S. Bramble
Cosponsors: Johnny Anderson
Patrice M. Arent
Jim Bird
Susan Duckworth
James A. Dunnigan
Neal B. Hendrickson
R. Curt Webb
Ryan D. Wilcox

LONG TITLE

General Description:

This bill prohibits, with certain exceptions, a service area from charging or collecting a fee.

Highlighted Provisions:

This bill:

- prohibits, with certain exceptions, a service area from charging or collecting a fee; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-2a-902, as enacted by Laws of Utah 2007, Chapter 329

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

Section 1. Section 17B-2a-902 is amended to read:

17B-2a-902. Provisions applicable to service areas.

(1) Each service area is governed by and has the powers stated in:

(a) this part; and

(b) except as provided in Subsection (5), Chapter 1, Provisions Applicable to All Local Districts.

(2) This part applies only to service areas.

(3) A service area is not subject to the provisions of any other part of this chapter.

(4) If there is a conflict between a provision in Chapter 1, Provisions Applicable to All Local Districts, and a provision in this part, the provision in this part governs.

(5) (a) Except as provided in Subsection (5)(b), on or after December 31, 2012, a service area may not charge or collect a fee under Section 17B-1-643 for:

(i) law enforcement services;

(ii) fire protection services;

(iii) 911 ambulance or paramedic services as defined in Section 26-8a-102 that are provided under a contract in accordance with Section 26-8a-405.2; or

(iv) emergency services.

(b) Subsection (5)(a) does not apply to:

(i) a fee charged or collected on an individual basis rather than a general basis;

(ii) a non-911 service as defined in Section 26-8a-102 that is provided under a contract in accordance with Section 26-8a-405.2;

(iii) an impact fee charged or collected for a public safety facility as defined in Section 11-36-102; or

(iv) a service area that includes within the boundary of the service area a county of the fourth, fifth, or sixth class.

CHAPTER 101
H. B. 232
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

DRUG PARAPHERNALIA DEFINITION AMENDMENTS

Chief Sponsor: Evan J. Vickers
Senate Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill modifies the Utah Drug Paraphernalia Act regarding some exemptions for syringes used for a legitimate medical purpose.

Highlighted Provisions:

This bill:

- provides that a person may not be charged with distribution of hypodermic syringes as drug paraphernalia if at the time of sale or distribution the syringes are in a sterile package and are to be used for a legitimate medical purpose, including:
  - injection of prescription medications as prescribed by a practitioner; and
  - the prevention of disease transmission; and
- provides that a person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sterile package.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37a-3, as last amended by Laws of Utah 2008, Chapter 295
58-37a-4, as enacted by Laws of Utah 1981, Chapter 76
58-37a-5, as last amended by Laws of Utah 2008, Chapter 295

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

Section 1. Section 58-37a-3 is amended to read:

58-37a-3. "Drug paraphernalia" defined.

As used in this chapter, "drug paraphernalia" means any equipment, product, or material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the human body in violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is not limited to:

(1) kits used, or intended for use, in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used, or intended for use, in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) isomerization devices used, or intended for use, to increase the potency of any species of plant which is a controlled substance;

(4) testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance;

(5) scales and balances used, or intended for use, in weighing or measuring a controlled substance;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited, dextrose and lactose, used, or intended for use to cut a controlled substance;

(7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other impurities from marihuana;

(8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to compound a controlled substance;

(9) capsules, balloons, envelopes, and other containers used, or intended for use to package small quantities of a controlled substance;

(10) containers and other objects used, or intended for use to store or conceal a controlled substance;

(11) hypodermic syringes, needles, and other objects used, or intended for use to parenterally inject a controlled substance into the human body, except as provided in Section 58-37a-5; and

(12) objects used, or intended for use to ingest, inhale, or otherwise introduce a controlled substance into the human body, including but not limited to:

(a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chillums;

(l) bongs; and

(m) ice pipes or chillers.

Section 2. Section 58-37a-4 is amended to read:

58-37a-4. Considerations in determining whether object is drug paraphernalia.

In determining whether an object is drug paraphernalia, the trier of fact, in addition to all other logically relevant factors, should consider:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to a controlled substance;

(3) the proximity of the object, in time and space, to a direct violation of this chapter;

(4) the proximity of the object to a controlled substance;

(5) the existence of any residue of a controlled substance on the object;

(6) instructions whether oral or written, provided with the object concerning its use;

(7) descriptive materials accompanying the object which explain or depict its use;

(8) national and local advertising concerning its use;

(9) the manner in which the object is displayed for sale;

(10) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(11) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(12) the existence and scope of legitimate uses of the object in the community; [~~and~~]

(13) whether the object is subject to Section 58-37a-5; and

[~~(13)~~] (14) expert testimony concerning its use.

Section 3. Section 58-37a-5 is amended to read:

58-37a-5. Unlawful acts.

(1) (a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body in violation of this chapter.

(b) Any person who violates [~~this~~] Subsection (1)(a) is guilty of a class B misdemeanor.

(2) (a) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body in violation of this act.

(b) Any person who violates [~~this~~] Subsection (2)(a) is guilty of a class A misdemeanor.

(3) Any person 18 years of age or [~~over~~] older who delivers drug paraphernalia to a person [~~under~~] younger than 18 years of age and who is three years or more younger than the person making the delivery is guilty of a third degree felony.

(4) (a) It is unlawful for any person to place in this state in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement is to promote the sale of drug paraphernalia.

(b) Any person who violates [~~this~~] Subsection (4)(a) is guilty of a class B misdemeanor.

(5) (a) A person may not be charged with distribution of hypodermic syringes as drug paraphernalia if at the time of sale or distribution the syringes are in a sealed sterile package and are for a legitimate medical purpose, including:

(i) injection of prescription medications as prescribed by a practitioner; or

(ii) the prevention of disease transmission.

(b) A person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sealed sterile package.

[~~(5)~~] (6) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

CHAPTER 102
H. B. 237
Passed February 18, 2011
Approved March 21, 2011
Effective May 10, 2011

ENFORCEMENT OF LIENS

Chief Sponsor: Julie Fisher
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies a provision relating to the enforcement of storage facility liens.

Highlighted Provisions:

This bill:

- requires a notice of a lien enforcement action involving the sale of a vehicle, vessel, outboard motor, or aircraft to be sent to the last known address of the registered owner and lienholder, as disclosed by the records of the Motor Vehicle Division.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-8-3, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

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

Section 1. Section 38-8-3 is amended to read:

38-8-3. Enforcement of lien -- Notice requirements -- Sale procedure and effect.

A claim of an owner which has become due against an occupant and which is secured by the owner's lien may be satisfied as follows:

(1) No enforcement action may be taken by the owner until the occupant has been in default continuously for a period of 30 days.

(2) After the occupant has been in default continuously for a period of 30 days, the owner may begin enforcement action if the occupant has been given notice in writing. The notice shall be delivered in person or sent by certified mail to the last known address of the occupant[~~, and a~~]. If the property to be sold in an enforcement action includes a vehicle, vessel, or outboard motor, as those terms are defined in Section 41-1a-102, or an aircraft as defined in Section 72-10-102, the notice shall also be delivered to the last known address of the registered owner and any lienholder, as disclosed by the records of the Motor Vehicle Division. A copy of the notice shall, at the same time, be sent to the sheriff of the county where the self-service storage facility is located. Any lienholder with an interest in the property to be sold or otherwise disposed of, of whom the owner has knowledge either through the disclosure provision on the rental agreement or through the existence of a validly filed and perfected UCC-1 financing statement with the Division of Corporations and Commercial Code, or through other written notification, shall be included in the notice process as set forth in this section.

(3) This notice shall include:

(a) an itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(b) a brief and general description of the personal property subject to the lien, which description shall be reasonably adequate to permit the person notified to identify the property; except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;

(c) a notification of denial of access to the personal property, if such denial is permitted under the terms of the rental agreement, which notification shall provide the name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notification;

(d) a demand for payment within a specified time not less than 15 days after delivery of the notice; and

(e) a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(4) Any notice made under this section shall be presumed delivered when it is deposited with the United States postal service and properly addressed with postage prepaid.

(5) (a) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published:

(i) (A) if there is a newspaper of general circulation in the county where the self-service storage facility is located, once a week for two consecutive weeks in a newspaper of general circulation in that county; or

(B) if there is not a newspaper of general circulation in the county where the self-service storage facility is located, by posting the advertisement of sale or other disposition in not less than six conspicuous places in the neighborhood where the self-service storage facility is located; and

(ii) in accordance with Section 45-1-101 for two weeks.

(b) The advertisement described in Subsection (5)(a) shall include:

(i) a brief and general description of the personal property reasonably adequate to permit its identification as provided for in Subsection (3)(b); the address of the self-service storage facility and the number, if any, of the space where the personal

property is located; and the name of the occupant and his last known address; and

(ii) the time, place, and manner of the sale or other disposition, which sale or other disposition shall take place not sooner than 15 days after the first publication.

(6) Any sale or other disposition of the personal property shall conform to the terms of the notice provided for in this section.

(7) Any sale or other disposition of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored.

(8) Before any sale or other disposition of personal property under this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property; upon receipt of this payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to that personal property.

(9) A purchaser in good faith of the personal property sold to satisfy a lien as provided for in this chapter takes the property free of any rights of persons against whom the lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner with the requirements of this section.

(10) In the event of a sale under this section, the owner may satisfy his lien for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in good faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for delivery to the occupant, lienholder, or other person in interest; if the occupant, lienholder, or other person in interest does not claim the balance of the proceeds within one year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed property with no further claim against the owner.

(11) If the requirements of this chapter are not satisfied, if the sale of the personal property is not in conformity with the notice of sale, or if there is a willful violation of this chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or any other person.

CHAPTER 103
H. B. 241
Passed February 18, 2011
Approved March 21, 2011
Effective May 10, 2011

CLEAN OUT THE MEDICINE CABINET MONTH DESIGNATION

Chief Sponsor: Michael T. Morley
Senate Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill designates the month of April as Clean Out the Medicine Cabinet Month in Utah.

Highlighted Provisions:

This bill:

- designates that the month of April shall be commemorated annually as Clean Out the Medicine Cabinet Month in Utah.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-1-401, as last amended by Laws of Utah 2010, Chapter 224

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

Section 1. Section 63G-1-401 is amended to read:

63G-1-401. Commemorative periods.

(1) The following days shall be commemorated yearly:

(a) Bill of Rights Day, on December 15;

(b) Constitution Day, on September 17;

(c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the U.S. armed forces around the world in defense of freedom;

(d) POW/MIA Recognition Day, on the third Friday in September; and

(e) Indigenous People Day, the Monday immediately preceding Thanksgiving.

(2) The Department of Veterans' Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of November shall be commemorated yearly as American Indian Heritage Month.

(4) The month of April shall be commemorated yearly as Clean Out the Medicine Cabinet Month to recognize the urgent need to make Utah homes and neighborhoods safe from prescription medication abuse and poisonings by the proper home storage and disposal of prescription and over-the-counter medications, and to educate citizens about the permanent medication disposal sites in Utah listed on useonlyasdirected.org that allow disposal throughout the year.

[~~(4)~~] (5) The first full week of May shall be commemorated yearly as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

[~~(5)~~] (6) January 24, 2011, shall be commemorated as John M. Browning Day.

CHAPTER 104
H. B. 247
Passed February 17, 2011
Approved March 21, 2011
Effective May 10, 2011

WATER DEVELOPMENT AMENDMENTS

Chief Sponsor: Michael E. Noel
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill provides for an origination fee for certain federally-funded water development loans.

Highlighted Provisions:

This bill:

- provides for an origination fee for certain federally-funded water development loans; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-10c-10, as last amended by Laws of Utah 2009, Chapter 183

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

Section 1. Section 73-10c-10 is amended to read:

73-10c-10. Origination fee.

(1) The Drinking Water Board and the Water Quality Board may establish an origination fee for a loan to fund the administration of the programs created by this chapter by following the procedures and requirements of Section 63J-1-504.

(2) The Drinking Water Board may establish an origination fee for a federally funded loan to fund the administration of programs allowed by 42 U.S.C. Sec. 300j-12, and regulations created thereunder, by following the procedures and requirements of Section 63J-1-504.

[~~(2) The~~] (3) An origination fee established in accordance with this section shall be part of the department fee schedule established under Section 19-1-201.

[~~(3)~~] (4) Notwithstanding the requirements of Section 63J-1-504, the board shall deposit [~~the~~] a fee paid in accordance with this section in the origination fee subaccount created in Section 73-10c-5 and use the fee to administer this chapter.

[~~(4)~~] (5) The loan recipient may pay the origination fee from the loan proceeds.

CHAPTER 105
H. B. 254
Passed March 1, 2011
Approved March 21, 2011
Effective May 10, 2011

EMERGENCY PROCEDURES AMENDMENTS

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill amends the Disaster Response and Recovery Act.

Highlighted Provisions:

This bill:

- provides an emergency declaration process within the state; and
- provides that a declaration of a local emergency provides a legal basis to request and obtain disaster assistance from other cities and counties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63K-4-301, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63K-4-301 is amended to read:

63K-4-301. Local emergency -- Declarations.

(1) (a) A local emergency may be declared by proclamation of the chief executive officer of a political subdivision.

(b) A local emergency shall not be continued or renewed for a period in excess of 30 days except by or with the consent of the governing body of the political subdivision.

(c) Any order or proclamation declaring, continuing, or terminating a local emergency shall be filed promptly with the office of the clerk of the affected political subdivision.

(2) A declaration of a local emergency:

(a) constitutes an official recognition that a disaster situation exists within the affected political subdivision;

(b) provides a legal basis for requesting and obtaining mutual aid or disaster assistance from other cities, counties, or from the state or federal government [~~disaster assistance~~];

(c) activates the response and recovery aspects of any and all applicable local disaster emergency plans; and

(d) authorizes the furnishing of aid and assistance in relation to the proclamation.

(3) A local emergency proclamation issued under this section shall state:

(a) the nature of the local emergency;

(b) the area or areas that are affected or threatened; and

(c) the conditions which caused the emergency.

(4) The emergency declaration process within the state shall be as follows:

(a) a city, town, or township shall declare to the county;

(b) a county shall declare to the state;

(c) the state shall declare to the federal government; and

(d) a tribe, as defined in Section 23-13-12.5, shall declare as determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sec. 5121 et seq.

(5) Nothing in this part affects:

(a) the governor's authority to declare a state of emergency under Section 63K-4-203; or

(b) the duties, requests, reimbursements, or other actions taken by a political subdivision participating in the state-wide mutual aid system pursuant to Title 53, Chapter 2, Part 5, Statewide Mutual Aid Act.

CHAPTER 106
H. B. 263
Passed March 3, 2011
Approved March 21, 2011
Effective May 10, 2011

LOCAL DISTRICT SERVICES AMENDMENTS

Chief Sponsor: David Clark
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions related to a service that a local district or special service district may provide and local district board of trustees provisions.

Highlighted Provisions:

This bill:

- amends provisions related to a service that a local district may provide;
- authorizes a local district board of trustees to compel the attendance of its own members;
- authorizes a person authorized by a local district to enter a premise that is provided a water system or sewer system by the local district;
- authorizes a local district to deliver, in certain circumstances, a service beyond its boundaries;
- amends mosquito abatement district board of trustees provisions;
- amends public transit district board of trustees provisions;
- amends provisions related to a service that a special service district may provide; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:
17B-1-202, as last amended by Laws of Utah 2010, Chapters 150 and 159
17B-1-643, as last amended by Laws of Utah 2009, First Special Session, Chapter 5
17B-2a-704, as enacted by Laws of Utah 2007, Chapter 329
17B-2a-807, as last amended by Laws of Utah 2010, Chapter 281
17D-1-106, as last amended by Laws of Utah 2009, Chapters 181 and 356
17D-1-201, as last amended by Laws of Utah 2009, First Special Session, Chapter 4

ENACTS:
17B-1-314, Utah Code Annotated 1953
17B-1-905, Utah Code Annotated 1953
17B-1-906, Utah Code Annotated 1953

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

Section 1. Section 17B-1-202 is amended to read:

17B-1-202. Local district may be created -- Services that may be provided -- Limitations.

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

(i) the operation of an airport;

(ii) the operation of a cemetery;

(iii) fire protection, paramedic, and emergency services, including consolidated 911 and emergency dispatch services;

(iv) garbage collection and disposal;

(v) health care, including health department or hospital service;

(vi) the operation of a library;

(vii) abatement or control of mosquitos and other insects;

(viii) the operation of parks or recreation facilities or services;

(ix) the operation of a sewage system;

(x) street lighting;

(xi) the construction and maintenance of a right-of-way, including:

(A) a curb;

(B) a gutter;

(C) a sidewalk;

(D) a street;

(E) a road;

(F) a water line;

(G) a sewage line;

(H) a storm drain;

(I) an electricity line;

(J) a communications line; or

(K) a natural gas line;

(xii) transportation, including public transit and providing streets and roads;

(xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;

(xiv) in accordance with Subsection (1)(c), the development and execution of a groundwater management plan in cooperation with and approved by the state engineer in accordance with Section 73-5-15;

(xv) law enforcement service; [~~or~~]

(xvi) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line[.]; or

(xvii) the control or abatement of earth movement or a landslide; or

(xviii) the operation of animal control services and facilities.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

(c) A groundwater management plan described in Subsection (1)(a)(xiv) may include the banking of groundwater rights by a local district in a critical management area as defined in Section 73-5-15 following the adoption of a groundwater management plan by the state engineer under Section 73-5-15.

(i) A local district may manage the groundwater rights it acquires under Subsection 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan described in Subsection (1)(c).

(ii) A groundwater right held by a local district to satisfy the provisions of a groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

(iii) (A) A local district may divest itself of a groundwater right subject to a determination that the groundwater right is not required to facilitate the groundwater management plan described in Subsection (1)(c).

(B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section 73-1-4 beginning on the date of divestiture.

(iv) Upon a determination by the state engineer that an area is no longer a critical management area, a water right held by the local district is subject to Section 73-1-4.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

(i) sewage system; or

(ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

(a) paramedic service; and

(b) emergency service, including hazardous materials response service.

(7) A local district created before May 11, 2010, authorized to provide the construction and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection (1)(a)(xi) on or after May 11, 2010.

(8) A local district created before May 10, 2011, authorized to provide culinary, irrigation, sewage, or storm water services may provide a service described in Subsection (1)(a)(xiii) on or after May 10, 2011.

Section 2. Section 17B-1-314 is enacted to read:

17B-1-314. Compelling attendance at board meetings.

The board of trustees of a local district may:

(1) compel the attendance of its own members at its meetings; and

(2) provide penalties it considers necessary for the failure to attend.

Section 3. Section 17B-1-643 is amended to read:

17B-1-643. Imposing or increasing a fee for service provided by local district.

(1) (a) Before imposing a new fee or increasing an existing fee for a service provided by a local district, each local district board of trustees shall first hold a public hearing at which any interested person may

speak for or against the proposal to impose a fee or to increase an existing fee.

(b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning no earlier than 6 p.m.

(c) A public hearing required under this Subsection (1) may be combined with a public hearing on a tentative budget required under Section 17B-1-610.

(d) Except to the extent that this section imposes more stringent notice requirements, the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act, in holding the public hearing under Subsection (1)(a).

(2) (a) Each local district board shall give notice of a hearing under Subsection (1) as provided in Subsection (2)(b)(i) or [~~(ii)~~] (c).

(b) (i) (A) The notice required under Subsection (2)(a) shall be published:

(I) in a newspaper or combination of newspapers of general circulation in the local district, if there is a newspaper or combination of newspapers of general circulation in the local district; or

(II) if there is no newspaper or combination of newspapers of general circulation in the local district, the local district board shall post at least one notice per 1,000 population within the local district, at places within the local district that are most likely to provide actual notice to residents within the local district.

(B) The notice described in Subsection (2)(b)(i)(A)(I):

(I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border;

(II) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear;

(III) whenever possible, shall appear in a newspaper that is published at least one day per week;

(IV) shall be in a newspaper or combination of newspapers of general interest and readership in the local district, and not of limited subject matter; and

(V) shall be run once each week for the two weeks preceding the hearing.

(ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district board intends to impose or increase a fee for a service provided by the local district and will hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not less than seven days after the day the first notice is published, for the purpose of hearing comments regarding the proposed imposition or increase of a fee and to explain the reasons for the proposed imposition or increase.

(c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of trustees may give the notice required under Subsection (2)(a) by mailing the notice to those within the district who:

(A) will be charged the fee for a district service, if the fee is being imposed for the first time; or

(B) are being charged a fee, if the fee is proposed to be increased.

(ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

(iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing fee.

(d) If the hearing required under this section is combined with the public hearing required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice required under Section 17B-1-609.

(e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie evidence that notice was properly given.

(f) If no challenge is made to the notice given of a hearing required by Subsection (1) within 30 days after the date of the hearing, the notice is considered adequate and proper.

(3) After holding a public hearing under Subsection (1), a local district board may:

(a) impose the new fee or increase the existing fee as proposed;

(b) adjust the amount of the proposed new fee or the increase of the existing fee and then impose the new fee or increase the existing fee as adjusted; or

(c) decline to impose the new fee or increase the existing fee.

(4) This section applies to each new fee imposed and each increase of an existing fee that occurs on or after July 1, 1998.

(5) (a) This section does not apply to an impact fee.

(b) The imposition or increase of an impact fee is governed by Title 11, Chapter 36, Impact Fees Act.

Section 4. Section 17B-1-905 is enacted to read:

17B-1-905. Right of entry on premises of water user.

A person authorized by a local district that provides a service from a water system or sewer system may enter upon a premise furnished with or provided that water service or sewer service to:

(1) examine an apparatus related to or used by the water system or sewer system;

(2) examine the amount of water used or wastewater discharged by the water system or sewer system and the manner of use or discharge; or

(3) make a necessary shutoff for vacancy, delinquency, or a violation of a local district rule or

regulation relating to the water service or sewer service.

Section 5. Section 17B-1-906 is enacted to read:

17B-1-906. Extraterritorial supply of surplus.

If a local district runs a surplus product or surplus capacity of a service that the local district is authorized to provide under Section 17B-1-202, the local district may sell or deliver the product or service to others beyond the local district boundaries.

Section 6. Section 17B-2a-704 is amended to read:

17B-2a-704. Mosquito abatement district board of trustees.

(1) (a) Notwithstanding Subsection 17B-1-302(2) and subject to Subsection (1)(b), the legislative body of each municipality that is entirely or partly included within a mosquito abatement district shall appoint one member to the board of trustees.

(b) If 75% or more of the area of a mosquito abatement district is within the boundaries of a single municipality:

(i) the board of trustees shall consist of five members; and

(ii) the legislative body of that municipality shall appoint all five members of the board.

(2) The legislative body of each county in which a mosquito abatement district is located shall appoint at least one member but no more than three members to the district's board of trustees [~~if~~] as follows:

(a) one member may be appointed if:

[~~(a)~~] (i) some or all of the county's unincorporated area is included within the boundaries of the mosquito abatement district and Subsection (2)(b) does not apply; or

[~~(b) (i)~~] (ii) (A) the number of municipalities that are entirely or partly included within the district is an even number less than nine; and

[~~(ii)~~] (B) Subsection (1)(b) does not apply[~~.~~]; or

(b) subject to Subsection (3), up to and including three members may be appointed if:

(i) more than 25% of the population of the mosquito abatement district resides outside the boundaries of all municipalities that may appoint members to the board of trustees; and

(ii) at least four members of the board of trustees are appointed by a municipality.

(3) A member appointed in accordance with Subsection (2)(b) may not reside within a municipality that may appoint a member to the board of trustees.

[~~(3)~~] (4) If the number of board members appointed by application of Subsections (1) and (2)(a) is an even number less than nine, the legislative body of the county in which the district is located shall appoint an additional member.

[~~(4)~~] (5) Each board of trustees member shall be appointed as provided in Section 17B-1-304.

[~~(5)~~] (6) Each vacancy on a mosquito abatement district board of trustees shall be filled by the applicable appointing authority as provided in Section 17B-1-304.

Section 7. Section 17B-2a-807 is amended to read:

17B-2a-807. Public transit district board of trustees -- Appointment -- Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.

(1) (a) If 200,000 people or fewer reside within the boundaries of a public transit district, the board of trustees shall consist of members appointed by the legislative bodies of each municipality, county, or unincorporated area within any county on the basis of one member for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the following calendar year.

(b) For purposes of determining membership under Subsection (1)(a), the number of service miles comprising a unit shall be determined jointly by the legislative bodies of the municipalities or counties comprising the district.

(c) The board of trustees of a public transit district under this Subsection (1) may include a member that is a commissioner on the Transportation Commission created in Section 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex officio member.

(d) Members appointed under this Subsection (1) shall be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties annex to or withdraw from the district using the same appointment procedures.

(e) For purposes of appointing members under this Subsection (1), municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the following calendar year is less than a full unit, as defined in Subsection (1)(b), may combine with any other similarly situated municipality or unincorporated area to form a whole unit and may appoint one member for each whole unit formed.

(2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the boundaries of a public transit district, the board of trustees shall consist of:

(i) 11 members:

(A) appointed as described under this Subsection (2); or

(B) retained in accordance with Section 17B-2a-807.5;

(ii) three members appointed as described in Subsection (4); and

(iii) one voting member appointed as provided in Subsection (11).

(b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting members to each county within the district using an average of:

(i) the proportion of population included in the district and residing within each county, rounded to the nearest 1/11 of the total transit district population; and

(ii) the cumulative proportion of transit sales and use tax collected from areas included in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit sales and use tax collected for the transit district.

(c) The board shall join an entire or partial county not apportioned a voting member under this Subsection (2) with an adjacent county for representation. The combined apportionment basis included in the district of both counties shall be used for the apportionment.

(d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county or combination of counties with the smallest additional fraction of a whole member proportion shall have one less member apportioned to it.

(ii) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county or combination of counties with the largest additional fraction of a whole member proportion shall have one more member apportioned to it.

(e) If the population in the unincorporated area of a county is at least 140,000, the county executive, with the advice and consent of the county legislative body, shall appoint one voting member to represent the population within a county's unincorporated area.

(f) If a municipality's population is at least 160,000, the chief municipal executive, with the advice and consent of the municipal legislative body, shall appoint one voting member to represent the population within a municipality.

(g) (i) The number of voting members appointed from a county and municipalities within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total voting member apportionment under this Subsection (2).

(ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member appointed by an appointing entity may be a locally elected public official.

(h) If the entire county is within the district, the remaining voting members for the county shall represent the county or combination of counties, if Subsection (2)(c) applies, or the municipalities within the county.

(i) If the entire county is not within the district, and the county is not joined with another county under Subsection (2)(c), the remaining voting members for the county shall represent a municipality or combination of municipalities.

(j) (i) Except as provided under Subsections (2)(e) and (f), voting members representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities within the county shall be designated and appointed by a simple majority of the chief executives of the municipalities within the county or combinations of counties if Subsection (2)(c) applies.

(ii) The appointments shall be made by joint written agreement of the appointing municipalities, with the consent and approval of the county legislative body of the county that has at least 1/11 of the district's apportionment basis.

(k) Voting members representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or simple majority of chief executive officers of municipalities with the consent of the legislative body of the municipality or municipalities.

(l) The appointment of voting members shall be made without regard to partisan political affiliation from among citizens in the community.

(m) Each voting member shall be a bona fide resident of the municipality, county, or unincorporated area or areas which the voting member is to represent for at least six months before the date of appointment, and must continue in that residency to remain qualified to serve as a voting member.

(n) (i) All population figures used under this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.

(ii) If population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(iii) All transit sales and use tax totals shall be obtained from the State Tax Commission.

(o) (i) The board shall be apportioned as provided under this section in conjunction with the decennial United States Census Bureau report every 10 years.

(ii) Within 120 days following the receipt of the population estimates under this Subsection (2)(o), the district shall reapportion representation on the board of trustees in accordance with this section.

(iii) The board shall adopt by resolution a schedule reflecting the current and proposed apportionment.

(iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to each of its constituent entities as defined under Section 17B-1-701.

(v) The appointing entities gaining a new board member shall appoint a new member within 30 days following receipt of the resolution.

(vi) The appointing entities losing a board member shall inform the board of which member currently serving on the board will step down:

(A) upon appointment of a new member under Subsection (2)(o)(v); or

(B) in accordance with Section 17B-2a-807.5.

(3) Upon the completion of an annexation to a public transit district under Chapter 1, Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the same basis as if the area had been included in the district as originally organized.

(4) In addition to the voting members appointed in accordance with Subsection (2), the board shall consist of three voting members appointed as follows:

(a) one member appointed by the speaker of the House of Representatives;

(b) one member appointed by the president of the Senate; and

(c) one member appointed by the governor.

(5) [~~(a)~~] Except as provided in Section 17B-2a-807.5, the terms of office of the voting members of the board shall be four years or until a successor is appointed, qualified, seated, and has taken the oath of office.

[~~(b) (i) A voting member may not be appointed for more than three successive full terms regardless of the appointing entity that appoints the voting member.~~]

[~~(ii) A person:~~]

[~~(A) may serve no more than 12 years on a public transit district board of trustees described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and~~]

[~~(B) that has served 12 years on a public transit district board of trustees described in Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described in Subsection (2)(a).~~]

(6) (a) Vacancies for voting members shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy within 90 days.

(b) If the appointing official under Subsection (1) does not fill the vacancy within 90 days, the board of trustees of the authority shall fill the vacancy.

(c) If the appointing official under Subsection (2) does not fill the vacancy within 90 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

(7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and ordinances coming before the board of trustees.

(b) A majority of all voting members of the board of trustees are a quorum for the transaction of business.

(c) The affirmative vote of a majority of all voting members present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, is sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

(8) Each public transit district shall pay to each voting member:

(a) an attendance fee of $50 per board or committee meeting attended, not to exceed $200 in any calendar month to any voting member; and

(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.

(9) (a) Members of the initial board of trustees shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings.

(b) The board of trustees shall elect from its voting membership a chair, vice chair, and secretary.

(c) The members elected under Subsection (9)(b) shall serve for a period of two years or until their successors shall be elected and qualified.

(d) On or after January 1, 2011, a locally elected public official is not eligible to serve as the chair, vice chair, or secretary of the board of trustees.

(10) Except as otherwise authorized under Subsection (2)(g) and Section 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's tenure in office, a voting member may not hold any employment, except as an independent contractor or locally elected public official, with a county or municipality within the district.

(11) The Transportation Commission created in Section 72-1-301:

(a) for a public transit district serving a population of 200,000 people or fewer, may appoint a commissioner of the Transportation Commission to serve on the board of trustees as a nonvoting, ex officio member; and

(b) for a public transit district serving a population of more than 200,000 people, shall appoint a commissioner of the Transportation Commission to serve on the board of trustees as a voting member.

(12) (a) (i) Each member of the board of trustees of a public transit district is subject to recall at any time by the legislative body of the county or municipality from which the member is appointed.

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

(iii) The legislative body recalling a board of trustees member shall provide written notice to the member being recalled.

(b) Upon providing written notice to the board of trustees, a member of the board may resign from the board of trustees.

(c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).

Section 8. Section 17D-1-106 is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, and 17B-1-118;

(b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, [~~and~~] 17B-1-313, and 17B-1-314;

(c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

Section 9. Section 17D-1-201 is amended to read:

17D-1-201. Services that a special service district may be created to provide.

As provided in this part, a county or municipality may create a special service district to provide any combination of the following services:

(1) water;

(2) sewerage;

(3) drainage;

(4) flood control;

(5) garbage collection and disposal;

(6) health care;

(7) transportation, including the receipt of federal secure rural school funds under Section 51-9-603 for the purposes of constructing, improving, repairing, or maintaining public roads;

(8) recreation;

(9) fire protection, including:

(a) emergency medical services, ambulance services, and search and rescue services, if fire protection service is also provided;

(b) Firewise Communities programs and the development of community wildfire protection plans; and

(c) the receipt of federal secure rural school funds as provided under Section 51-9-603 for the purposes of carrying out Firewise Communities programs, developing community wildfire protection plans, and performing emergency services, including firefighting on federal land and other services authorized under this Subsection (9);

(10) providing, operating, and maintaining correctional and rehabilitative facilities and programs for municipal, state, and other detainees and prisoners;

(11) street lighting;

(12) consolidated 911 and emergency dispatch;

(13) animal shelter and control;

(14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease Funds, and expending those funds to provide construction and maintenance of public facilities, traditional governmental services, and planning, as a means for mitigating impacts from extractive mineral industries; [~~and~~]

(15) in a county of the first class, extended police protection[~~.~~]; or

(16) control or abatement of earth movement or a landslide.

CHAPTER 107
H. B. 267
Passed March 7, 2011
Approved March 21, 2011
Effective May 10, 2011

PUBLIC BODY RULES OF PROCEDURE

Chief Sponsor: Melvin R. Brown
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill requires that a political subdivision adopt rules of order and procedure.

Highlighted Provisions:

This bill:

- defines terms;
- requires that the following adopt and conduct a public meeting in accordance with rules of order and procedure:
  - a municipal legislative body;
  - a municipal planning commission;
  - a county planning commission;
  - a county legislative body;
  - a local district board of trustees; and
  - a local school board; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
10-9a-301, as renumbered and amended by Laws of Utah 2005, Chapter 254
17-27a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330
17-27a-301, as last amended by Laws of Utah 2008, Chapter 250
17-53-206, as last amended by Laws of Utah 2006, Chapter 14
17B-1-102, as last amended by Laws of Utah 2010, Chapter 254
17B-1-310, as renumbered and amended by Laws of Utah 2007, Chapter 329

ENACTS:

53A-3-102, Utah Code Annotated 1953

REPEALS AND REENACTS:

10-3-606, as enacted by Laws of Utah 1977, Chapter 48

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

Section 1. Section 10-3-606 is repealed and reenacted to read:

10-3-606. Rules of order and procedure.

(1) As used in this section, "rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

(2) (a) Subject to Subsection (2)(b), a municipal legislative body shall:

(i) adopt rules of order and procedure to govern a public meeting of the legislative body;

(ii) conduct a public meeting in accordance with the rules of order and procedure described in Subsection (2)(a)(i); and

(iii) make the rules of order and procedure described in Subsection (2)(a)(i) available to the public:

(A) at each meeting of the municipal legislative body; and

(B) on the municipality's public website, if available.

(b) Subsection (2)(a) does not affect a municipal legislative body's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

Section 2. Section 10-9a-103 is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in

accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (10)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (10)(a)(i).

(11) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(15) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(17) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

(19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(21) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(22) "Land use application" means an application required by a municipality's land use ordinance.

(23) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(24) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(25) "Land use permit" means a permit issued by a land use authority.

(26) "Legislative body" means the municipal council.

(27) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(28) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(29) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(31) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(32) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(33) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

(34) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(35) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

(36) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(37) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(38) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(39) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(40) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(41) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(42) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(43) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

(44) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(45) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[~~(45)~~] (46) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[~~(46)~~] (47) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

[~~(47)~~] (48) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(48)~~] (49) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

[~~(49)~~] (50) "State" includes any department, division, or agency of the state.

[~~(50)~~] (51) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[~~(51)~~] (52) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [~~(51)~~] (52)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting

separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [~~(51)~~] (52) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[~~(52)~~] (53) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

[~~(53)~~] (54) "Unincorporated" means the area outside of the incorporated area of a city or town.

[~~(54)~~] (55) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

[~~(55)~~] (56) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 3. Section 10-9a-301 is amended to read:

10-9a-301. Ordinance establishing planning commission required -- Ordinance requirements -- Compensation.

(1) (a) Each municipality shall enact an ordinance establishing a planning commission.

(b) The ordinance shall define:

(i) the number and terms of the members and, if the municipality chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission; [~~and~~]

(v) subject to Subsection (1)(c), the rules of order and procedure for use by the planning commission in a public meeting; and

[~~(v)~~] (vi) other details relating to the organization and procedures of the planning commission.

(c) Subsection (1)(b)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

Section 4. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by

ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(i) not located on the same property as a building described in Subsection (11)(a)(i); and

(ii) used in support of the purposes of a building described in Subsection (11)(a)(i).

(12) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(13) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(14) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(16) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

(17) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(18) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(19) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

(20) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(21) "Impact fee" means a payment of money imposed under Title 11, Chapter 36, Impact Fees Act.

(22) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

(23) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

(24) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(25) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) "Land use application" means an application required by a county's land use ordinance.

(27) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(28) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

(29) "Land use permit" means a permit issued by a land use authority.

(30) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(31) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(32) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(33) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(35) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(36) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(37) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

(38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(39) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

(40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

(41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(43) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(45) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

(46) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(47) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

(48) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(49) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[~~(49)~~] (50) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[~~(50)~~] (51) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

[~~(51)~~] (52) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(52)~~] (53) "Specified public utility" means an electrical corporation, gas corporation, or telephone

corporation, as those terms are defined in Section 54-2-1.

[~~(53)~~] (54) "State" includes any department, division, or agency of the state.

[~~(54)~~] (55) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[~~(55)~~] (56) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [~~(55)~~] (56)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance; or

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [~~(55)~~] (56) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

[~~(56)~~] (57) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

[~~(57)~~] (58) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

[~~(58)~~] (59) "Unincorporated" means the area outside of the incorporated area of a municipality.

[~~(59)~~] (60) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

[~~(60)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 5. Section 17-27a-301 is amended to read:

17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Township planning commission -- Compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a

countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) (a) The ordinance shall define:

[~~(a)~~] (i) the number and terms of the members and, if the county chooses, alternate members;

[~~(b)~~] (ii) the mode of appointment;

[~~(c)~~] (iii) the procedures for filling vacancies and removal from office;

[~~(d)~~] (iv) the authority of the planning commission; [~~and~~]

(v) subject to Subsection (2)(b), the rules of order and procedure for use by the planning commission in a public meeting; and

[~~(e)~~] (vi) other details relating to the organization and procedures of the planning commission.

(b) Subsection (2)(a)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) (i) If the county establishes a township planning commission, the county legislative body shall enact an ordinance [~~defining~~] that defines:

(A) appointment procedures[~~,~~];

(B) procedures for filling vacancies and removing members from office[~~, and other~~];

(C) subject to Subsection (3)(a)(ii), the rules of order and procedure for use by the township planning commission in a public meeting; and

(D) details relating to the organization and procedures of each township planning commission.

(ii) Subsection (3)(a)(i)(C) does not affect the township planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(k)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township planning commission from a list of three persons submitted by the county legislative body.

(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

(e) (i) The legislative body of each county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located shall enact an ordinance that provides for the election of at least three members of the planning commission of that township.

(ii) The election of planning commission members under Subsection (3)(e)(i) shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

(f) (i) (A) The legislative body of each county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located shall enact an ordinance appointing each elected member of the planning and zoning board of the former township, established under Laws of Utah 1996, Chapter 308, as a member of the planning commission of the reconstituted or reinstated township. Each member appointed under this subsection shall be considered an elected member.

(B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member appointed

under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an elected member of the former township planning and zoning board would have expired.

(II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members coincide with the schedule under Subsection (3)(e)(ii) for elected members.

(ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Laws of Utah 1996, Chapter 308, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) has more than one appointed member who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) no later than August 16, 1997, to fill the position of each dismissed member.

(g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

(ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection (3)(f), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that had previously been under the jurisdiction of the township planning and zoning board.

(4) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

Section 6. Section 17-53-206 is amended to read:

17-53-206. Meetings to comply with open meetings law -- Records and minutes -- Compelling attendance at meetings of legislative body.

(1) As used in this section, "rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[~~(1)~~] (2) Each meeting of the county legislative body shall comply with Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) Subject to Subsection (3)(b), a county legislative body shall:

(i) adopt rules of order and procedure to govern a public meeting of the legislative body;

(ii) conduct a public meeting in accordance with the rules of order and procedure described in Subsection (3)(a)(i); and

(iii) make the rules of order and procedure described in Subsection (3)(a)(i) available to the public:

(A) at each meeting of the county legislative body; and

(B) on the county's public website, if available.

(b) Subsection (3)(a) does not affect a county legislative body's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

[~~(2)~~] (4) The chair and clerk of the county legislative body shall sign the records and minutes of the county legislative body.

[~~(3)~~] (5) The legislative body of a county may compel the attendance of its own members at its meetings and provide penalties it considers necessary for the failure to comply with an exercise of the authority to compel attendance.

Section 7. Section 17B-1-102 is amended to read:

17B-1-102. Definitions.

As used in this title:

(1) "Appointing authority" means the person or body authorized to make an appointment to the board of trustees.

(2) "Basic local district":

(a) means a local district that is not a specialized local district; and

(b) includes an entity that was, under the law in effect before April 30, 2007, created and operated as a local district, as defined under the law in effect before April 30, 2007.

(3) "Bond" means:

(a) a written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and

(b) a lease agreement, installment purchase agreement, or other agreement that:

(i) includes an obligation by the district to pay money; and

(ii) the district's board of trustees, in its discretion, treats as a bond for purposes of Title 11, Chapter 14, Local Government Bonding Act, or Title 11, Chapter 27, Utah Refunding Bond Act.

(4) "Cemetery maintenance district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 1, Cemetery Maintenance District Act, including an entity that was created and operated as a cemetery maintenance district under the law in effect before April 30, 2007.

(5) "Drainage district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 2, Drainage District Act, including an entity that was created and operated as a drainage district under the law in effect before April 30, 2007.

(6) "Facility" or "facilities" includes any structure, building, system, land, water right, water, or other real or personal property required to provide a service that a local district is authorized to provide, including any related or appurtenant easement or right-of-way, improvement, utility, landscaping, sidewalk, road, curb, gutter, equipment, or furnishing.

(7) "Fire protection district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 3, Fire Protection District Act, including an entity that was created and operated as a fire protection district under the law in effect before April 30, 2007.

(8) "General obligation bond":

(a) means a bond that is directly payable from and secured by ad valorem property taxes that are:

(i) levied:

(A) by the district that issues the bond; and

(B) on taxable property within the district; and

(ii) in excess of the ad valorem property taxes of the district for the current fiscal year; and

(b) does not include:

(i) a short-term bond;

(ii) a tax and revenue anticipation bond; or

(iii) a special assessment bond.

(9) "Improvement district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 4, Improvement District Act, including an entity that was created and operated as a county improvement district under the law in effect before April 30, 2007.

(10) "Irrigation district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 5, Irrigation District Act, including an entity that was created and operated as an irrigation district under the law in effect before April 30, 2007.

(11) "Local district" means a limited purpose local government entity, as described in Section 17B-1-103, that operates under, is subject to, and has the powers set forth in:

(a) this chapter; or

(b) (i) this chapter; and

(ii) (A) Chapter 2a, Part 1, Cemetery Maintenance District Act;

(B) Chapter 2a, Part 2, Drainage District Act;

(C) Chapter 2a, Part 3, Fire Protection District Act;

(D) Chapter 2a, Part 4, Improvement District Act;

(E) Chapter 2a, Part 5, Irrigation District Act;

(F) Chapter 2a, Part 6, Metropolitan Water District Act;

(G) Chapter 2a, Part 7, Mosquito Abatement District Act;

(H) Chapter 2a, Part 8, Public Transit District Act;

(I) Chapter 2a, Part 9, Service Area Act; or

(J) Chapter 2a, Part 10, Water Conservancy District Act.

(12) "Metropolitan water district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 6, Metropolitan Water District Act, including an entity that was created and operated as a metropolitan water district under the law in effect before April 30, 2007.

(13) "Mosquito abatement district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 7, Mosquito Abatement District Act, including an entity that was created and operated as a mosquito abatement district under the law in effect before April 30, 2007.

(14) "Municipal" means of or relating to a municipality.

(15) "Municipality" means a city or town.

(16) "Political subdivision" means a county, city, town, local district under this title, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

(17) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, or a political subdivision.

(18) "Public entity" means:

(a) the United States or an agency of the United States;

(b) the state or an agency of the state;

(c) a political subdivision of the state or an agency of a political subdivision of the state;

(d) another state or an agency of that state; or

(e) a political subdivision of another state or an agency of that political subdivision.

(19) "Public transit district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 8, Public Transit District Act, including an entity that was created and operated as a public transit district under the law in effect before April 30, 2007.

(20) "Revenue bond":

(a) means a bond payable from designated taxes or other revenues other than the local district's ad valorem property taxes; and

(b) does not include:

(i) an obligation constituting an indebtedness within the meaning of an applicable constitutional or statutory debt limit;

(ii) a tax and revenue anticipation bond; or

(iii) a special assessment bond.

(21) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[~~(21)~~] (22) "Service area" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 9, Service Area Act, including an entity that was created and operated as a county service area or a regional service area under the law in effect before April 30, 2007.

[~~(22)~~] (23) "Short-term bond" means a bond that is required to be repaid during the fiscal year in which the bond is issued.

[~~(23)~~] (24) "Special assessment" means an assessment levied against property to pay all or a portion of the costs of making improvements that benefit the property.

[~~(24)~~] (25) "Special assessment bond" means a bond payable from special assessments.

[~~(25)~~] (26) "Specialized local district" means a local district that is a cemetery maintenance district, a drainage district, a fire protection district, an improvement district, an irrigation district, a metropolitan water district, a mosquito abatement district, a public transit district, a service area, or a water conservancy district.

[~~(26)~~] (27) "Taxable value" means the taxable value of property as computed from the most recent equalized assessment roll for county purposes.

[~~(27)~~] (28) "Tax and revenue anticipation bond" means a bond:

(a) issued in anticipation of the collection of taxes or other revenues or a combination of taxes and other revenues; and

(b) that matures within the same fiscal year as the fiscal year in which the bond is issued.

[~~(28)~~] (29) "Unincorporated" means not included within a municipality.

[~~(29)~~] (30) "Water conservancy district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 10, Water Conservancy District Act, including an entity that was created and operated as a water conservancy district under the law in effect before April 30, 2007.

[~~(30)~~] (31) "Works" includes a dam, reservoir, well, canal, conduit, pipeline, drain, tunnel, power plant, and any facility, improvement, or property necessary or convenient for supplying or treating water for any beneficial use, and for otherwise accomplishing the purposes of a local district.

Section 8. Section 17B-1-310 is amended to read:

17B-1-310. Quorum of board of trustees -- Meetings of the board.

(1) (a) (i) Except as provided in Subsection (1)(b), a majority of the board of trustees constitutes a quorum for the transaction of board business, and action by a majority of a quorum constitutes action of the board.

(ii) Except as otherwise required by law, an otherwise valid action of the board is not made invalid because of the method chosen by the board to take or memorialize the action.

(b) (i) Subject to Subsection (1)(b)(ii), a board may adopt bylaws or other rules that require more than a majority to constitute a quorum or that require action by more than a majority of a quorum to constitute action by the board.

(ii) Except for board action to dispose of real property owned by the local district, board bylaws or rules may not require a vote of more than two-thirds vote of the board to constitute board action.

(2) The board of trustees shall hold such regular and special meetings as the board determines at a location that the board determines.

(3) (a) Each meeting of the board of trustees shall comply with Title 52, Chapter 4, Open and Public Meetings Act.

(b) Subject to Subsection (3)(c), a board of trustees shall:

(i) adopt rules of order and procedure to govern a public meeting of the board of trustees;

(ii) conduct a public meeting in accordance with the rules of order and procedure described in Subsection (3)(b)(i); and

(iii) make the rules of order and procedure described in Subsection (3)(b)(i) available to the public:

(A) at each meeting of the board of trustees; and

(B) on the local district's public website, if available.

(c) Subsection (3)(b) does not affect the board of trustees' duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

Section 9. Section 53A-3-102 is enacted to read:

53A-3-102. (Codified as 53A-3-106) Rules of order and procedure.

(1) As used in this section, "rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

(2) Subject to Subsection (3), a local school board shall:

(a) adopt rules of order and procedure to govern a public meeting of the local school board;

(b) conduct a public meeting in accordance with the rules of order and procedure described in Subsection (2)(a); and

(c) make the rules of order and procedure described in Subsection (2)(a) available to the public:

(i) at each public meeting of the local school board; and

(ii) on the local school board's public website, if available.

(3) Subjection (2)(a) does not affect a local school board's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

CHAPTER 108
H. B. 272
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

INDIGENT DEFENSE ACT AMENDMENTS

Chief Sponsor: Kay L. McIff
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill requires the court, when making a determination of indigency for a defendant, to consider the reasonableness of the fees and expenses charge by privately retained defense counsel.

Highlighted Provisions:

This bill:

- amends the definition of compelling reason; and
- requires the court, when making a determination of indigency, to consider the reasonableness of fees and expenses charged by privately retained defense counsel.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-32-201, as last amended by Laws of Utah 2006, Chapter 49
77-32-202, as last amended by Laws of Utah 2002, Chapter 263

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

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

77-32-201. Definitions.

For the purposes of this chapter:

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

(2) "Compelling reason" [~~may~~] shall include one or more of the following circumstances relating to the contracting attorney:

(a) a conflict of interest;

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

(c) the defense resource is insufficient or lacks expertise to provide a complete defense.

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

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

(5) "Legal aid association" means a nonprofit defense association that provides counsel and defense resources for indigent defendants.

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

(7) "Legal defense" means legal counsel, defense resources, or both.

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

(9) "Serious offense" means a felony or capital felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) number, ages, and relationships of any dependents; [~~and~~]

[~~(v) other relevant factors.~~]

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

(vi) other factors considered relevant by the court.

(4) Upon making a finding of indigence, the court shall enter the findings on the record and enter an order assigning defense counsel to represent the defendant in the case. The clerk of the court shall send a copy of the affidavit and order to the prosecutor.

(5) If the county or municipality providing the defense counsel has any objections to or concerns with the finding of indigency and assignment of defense counsel or the continuing of indigency status and assignment of a public defender, it shall file notice with the court and a hearing shall be scheduled to review the findings and give the county or municipality the opportunity to present evidence and arguments as to the reasons the finding of indigency should be reversed.

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

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

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

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

CHAPTER 109
H. B. 334
Passed March 8, 2011
Approved March 21, 2011
Effective May 10, 2011

FAMILY EXPENSE AMENDMENTS

Chief Sponsor: Stephen E. Sandstrom
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the family expense statute to allow a creditor to collect reasonable collection costs and attorney fees.

Highlighted Provisions:

This bill:

- allows a creditor to collect reasonable collection costs and attorney fees incurred in collecting a debt under the family expense statute.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-2-9, Utah Code Annotated 1953

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

Section 1. Section 30-2-9 is amended to read:

30-2-9. Family expenses -- Joint and several liability.

(1) The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or separately.

(2) In an action by a creditor against either husband or wife for the payment of a family expense, the creditor or debtor as the prevailing party shall be entitled to recover reasonable collection costs, interest, and attorney fees as provided in a contract between the creditor and debtor.

CHAPTER 110
H. B. 336
Passed March 4, 2011
Approved March 21, 2011
Effective May 10, 2011

MEDICAL PROFESSIONAL LICENSING DURING A DECLARED EMERGENCY

Chief Sponsor: Evan J. Vickers
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill modifies the Division of Occupational and Professional Licensing Act and the Pharmacy Practice Act by enacting language regarding health department protocols.

Highlighted Provisions:

This bill:

- authorizes the Department of Health to establish a protocol for the distribution of medicine in a national, state, or local emergency to:
  - a local health department;
  - a pharmacy;
  - a prescribing practitioner;
  - a licensed health care facility;
  - a federally qualified community health clinic;
  - a patient's contact; or
  - emergency service personnel;
- authorizes the Department of Health to establish a protocol to allow a physician to write a prescription for a patient's contact when necessary to treat a reportable disease or non-emergency condition; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-307, as last amended by Laws of Utah 2008, Chapter 242
58-17b-620, as enacted by Laws of Utah 2004, Chapter 280

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

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

58-1-307. Exemptions from licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

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

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

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

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

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

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

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

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

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

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

(vii) a physician assistant under Chapter 70a, Physician Assistant Act;

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

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

(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and

(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

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

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

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

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:

(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or

(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:

(A) a pharmacy;

(B) a prescribing practitioner;

(C) a licensed health care facility;

(D) a federally qualified community health clinic; or

(E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).

(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:

(a) received from the strategic national stockpile to local health departments; and

(b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

(a) coordinate the distribution of:

(i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and

(ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;

(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient, as defined in Subsection 26-6-2(4), without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and

(c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:

(i) is working in a triage situation;

(ii) is receiving preventative or medical treatment in a triage situation;

(iii) does not have coverage for the prescription in the individual's health insurance plan;

(iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or

(v) otherwise has a direct impact on public health.

(9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Section 2. Section 58-17b-620 is amended to read:

58-17b-620. Prescriptions issued within the public health system.

(1) As used in this section:

(a) "Department of Health" means the state Department of Health created in Section 26-1-4.

(b) "Health department" means either the Department of Health or a local health department.

(c) "Local health departments" mean the local health departments created in Title 26A, Chapter 1, Local Health Departments.

[~~(2) A health department may implement the prescription procedure under Subsection (3) for prescription drugs, other than controlled substances, for use in clinics providing:~~]

(2) When it is necessary to treat a reportable disease or non-emergency condition that has a direct impact on public health, a health department may implement the prescription procedure described in Subsection (3) for a prescription drug that is not a controlled substance for use in:

(a) a clinic; or

(b) a remote or temporary off-site location, including a triage facility established in the community, that provides:

[~~(a)~~] (i) treatment for sexually transmitted [~~disease treatment~~] infections;

[~~(b)~~] (ii) fluoride treatment; [~~or~~]

[~~(c)~~] (iii) travel immunization[~~.~~];

(iv) preventative treatment for an individual with latent tuberculosis infection;

(v) preventative treatment for an individual at risk for an infectious disease that has a direct impact on public health when the treatment is indicated to prevent the spread of disease or to mitigate the seriousness of infection in the exposed individual; or

(vi) other treatment as defined by the Department of Health rule.

(3) In a circumstance described in Subsection (2), an individual with prescriptive authority may write a prescription for each contact, as defined in Subsection 26-6-2(4), of a patient of the individual with prescriptive authority without a face-to-face exam, if:

(a) the individual with prescriptive authority is treating the patient for a reportable disease or non-emergency condition having a direct impact on public health; and

(b) the contact's condition is the same as the patient of the individual with prescriptive authority.

[~~(3)~~] (4) The following prescription procedure shall be carried out in accordance with the requirements of Subsection [~~(4)~~] (5) and may be used only in the [~~clinics listed~~] circumstances

described under [~~Subsection~~] Subsections (2) and (3):

(a) a physician writes and signs a prescription for a prescription [~~drugs~~] drug, other than a controlled [~~substances~~] substance, without the name and address of the patient and without the date the prescription is provided to the patient; and

(b) the physician authorizes a registered nurse employed by the health department to complete the prescription written under this Subsection (3) by inserting the patient's name and address, and the date the prescription is provided to the patient, in accordance with the physician's standing written orders and a written health department protocol approved by the physician and the medical director of the state Department of Health.

[~~(4) When allowing prescriptions to be written under Subsection (3), the health department shall employ a physician who:~~]

[~~(a) assumes specific responsibility for all prescriptions issued in his name under the procedure in Subsection (3) by the health department; and~~]

[~~(b) enters into a written, signed agreement with the health department, which agreement is approved by the division and state:~~]

[~~(i) the terms and conditions under which the physician will prepare and sign prescriptions that do not include the name and address of the patient and the date the prescription is provided to the patient;~~]

[~~(ii) the methods which will be used to ensure the signed prescriptions are secure and not available for unauthorized use;~~]

[~~(iii) the minimum qualifications and training of a registered nurse authorized by the physician and department to complete and provide prescriptions to a patient;~~]

[~~(iv) under what conditions prescriptions completed by an authorized registered nurse will be provided to a patient in accordance with standing orders and written protocols, and the specific prescription drugs for which prescriptions may be written;~~]

[~~(v) the manner in which the physician will audit and review the records of patients receiving prescriptions; and~~]

[~~(vi) the manner in which records of prescriptions issued will be maintained for audit by the physician and division.~~]

[~~(5) The health department shall file and maintain with the division a current copy of all agreements signed by physicians under Subsection (4).~~]

(5) A physician assumes responsibility for all prescriptions issued under this section in the physician's name.

(6) (a) All prescription forms to be used by a physician and health department in accordance with this section shall be serially numbered according to a numbering system assigned to that health department.

(b) All prescriptions issued shall contain all information required under this chapter and rules adopted under this chapter.

CHAPTER 111
H. B. 349
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

EXPEDITED JURY TRIALS

Chief Sponsor: Brian S. King
Senate Sponsor: Stephen H. Urquhart
Cosponsors: Patrice M. Arent
Derek E. Brown
Susan Duckworth
Janice M. Fisher
Lynn N. Hemingway
Ken Ivory
Kay L. McIff
Michael T. Morley
Marie H. Poulson
Mark A. Wheatley
Larry B. Wiley

LONG TITLE

General Description:

This bill creates a new part in Title 78B, Chapter 3, allowing for expedited jury trials.

Highlighted Provisions:

This bill:

- creates Title 78B, Chapter 3, Part 9, Expedited Jury Trial Act, as a pilot project;
- defines terms;
- requires that all parties to an action agree to participate;
- requires the Judicial Council to create rules;
- allows parties to set limits on damages;
- limits post-trial motions;
- requires a report to the Judiciary Interim Committee in 2016; and
- is repealed January 1, 2017.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:
63I-2-278, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:
78B-3-901, Utah Code Annotated 1953
78B-3-902, Utah Code Annotated 1953
78B-3-903, Utah Code Annotated 1953
78B-3-904, Utah Code Annotated 1953
78B-3-905, Utah Code Annotated 1953
78B-3-906, Utah Code Annotated 1953
78B-3-907, Utah Code Annotated 1953
78B-3-908, Utah Code Annotated 1953
78B-3-909, Utah Code Annotated 1953

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

Section 1. Section 63I-2-278 is amended to read:

63I-2-278. Repeal dates, Title 78A and Title 78B.

(1) Section 78A-9-103, Practicing law without a license, is repealed May 3, 2012.

(2) [~~Subsections 78B-12-301(1) and 78B-12-302(1) are repealed January 1, 2010.~~] Title 78B, Chapter 3, Part 9, Expedited Jury Trial Act, is repealed January 1, 2017.

Section 2. Section 78B-3-901 is enacted to read:

Part 9. Expedited Jury Trial

78B-3-901. Title.

This part is known as the "Expedited Jury Trial Act."

Section 3. Section 78B-3-902 is enacted to read:

78B-3-902. Pilot project -- Rules and procedures.

The Judicial Council shall by rule create and provide procedures for a pilot project for expedited jury trials in civil actions.

(1) The program shall comply with all constitutional and statutory requirements for jury trials.

(2) All parties to an action shall agree to participation in an expedited jury trial.

(3) Any matters not expressly addressed in this part, in the implementing rules of the court, or in an agreement authorized by this part, are governed by applicable statutes and rules governing civil actions.

Section 4. Section 78B-3-903 is enacted to read:

78B-3-903. Agreement.

(1) An agreement to participate in an expedited jury trial under this part may be entered into only after a dispute has arisen and an action has been filed.

(2) Any party to an action may file a motion with the court for an expedited jury trial.

(3) Notice of the motion shall be served on all other parties.

(4) All parties agreeing to participate in an expedited jury trial and, if represented, their counsel shall sign the agreement filed with the court.

(5) The agreement to participate in the expedited jury trial process is binding upon the parties.

(6) The conditions of the agreement shall include:

(a) waiver of the right to appeal the verdict;

(b) waiver of the right to move for a directed verdict;

(c) waiver of the right to file post trial motions, except as permitted by rule and Section 78B-3-906; and

(d) an agreed-upon range of monetary damages that will be awarded, regardless of the verdict, if liability and allocation of fault are proved.

(7) The Judicial Council may by rule impose additional reasonable conditions.

(8) If the jury verdict is within the agreed range of monetary damages, the court shall enter the verdict as rendered. If the jury verdict is outside the agreed range of monetary damages the court shall, as appropriate, increase or decrease the damages to the minimum or maximum agreed amount.

Section 5. Section 78B-3-904 is enacted to read:

78B-3-904. Juries.

(1) Juries in expedited jury trial cases shall be composed of no less than six jurors with no alternates.

(2) Nothing in this part is intended to preclude a jury from deliberating as long as needed.

Section 6. Section 78B-3-905 is enacted to read:

78B-3-905. Rules of evidence.

(1) The rules of evidence apply in expedited jury trials, unless the parties stipulate otherwise.

(2) Any stipulation by the parties to use relaxed rules of evidence may not be construed to eliminate or affect the right of a witness or party to invoke any applicable privilege or other law protecting confidentiality.

(3) The right to issue subpoenas and notices to appear to secure the attendance of witnesses or the production of documents at trial shall be in accordance with the Utah Rules of Civil Procedure.

Section 7. Section 78B-3-906 is enacted to read:

78B-3-906. Post-trial motions -- Appeals.

(1) A party may move for a new trial or appeal a judgment only on the following grounds:

(a) judicial misconduct that materially affected the substantive rights of a party;

(b) misconduct of the jury;

(c) corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial; or

(d) to correct errors of law.

(2) Parties may file post-trial motions:

(a) relating to costs and attorney fees;

(b) to correct a clerical error in a judgment; and

(c) to enforce a judgment.

Section 8. Section 78B-3-907 is enacted to read:

78B-3-907. Attorney fees.

Unless the parties otherwise agree in the consent order, all statutes and rules governing costs and attorney fees apply in expedited jury trials.

Section 9. Section 78B-3-908 is enacted to read:

78B-3-908. Judicial Council to make rules.

The Judicial Council shall, on or before July 1, 2012, adopt rules and forms to establish uniform procedures implementing the provisions of this part, including:

(1) additional content of proposed agreements;

(2) pretrial exchanges and submissions;

(3) pretrial conferences;

(4) time limits for jury selection;

(5) time limits for trial, including presentation of evidence and argument;

(6) presentation of evidence and testimony; and

(7) any other procedures necessary to implement this part.

Section 10. Section 78B-3-909 is enacted to read:

78B-3-909. Report to Legislature -- Repeal date.

(1) The Administrative Office of the Courts shall present a report to the Judiciary Interim Committee not later than September 2016 regarding the program. The report shall include:

(a) the number of expedited jury trials held;

(b) the number of appeals from expedited jury trials;

(c) the approximate cost increase or cost savings experienced by using expedited jury trials; and

(d) a recommendation to continue or sunset this part.

(2) This part is repealed January 1, 2017.

CHAPTER 112
H. B. 359
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

BUSINESS RESOURCE CENTER ADVISORY BOARD MODIFICATION

Chief Sponsor: Val L. Peterson
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies provisions of the Utah Business Resource Centers Act related to the Utah Business Assistance Advisory Board.

Highlighted Provisions:

This bill:

- changes the name of the advisory board from the Utah Business Resource Centers Advisory Board to the Utah Business Assistance Advisory Board;
- modifies the composition of the advisory board; and
- expands the duties of the advisory board.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-1-2704, as enacted by Laws of Utah 2008, Chapter 50
63M-1-2706, as last amended by Laws of Utah 2010, Chapter 286
63M-1-2707, as enacted by Laws of Utah 2008, Chapter 50

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

Section 1. Section 63M-1-2704 is amended to read:

63M-1-2704. Establishment and administration of business resource centers -- Components.

(1) The Governor's Office of Economic Development, hereafter referred to in this part as "the office," shall establish business resource centers in at least four different geographical regions of the state where host institutions are located and the host institutions agree to enter into a business resource center partnership with the office.

(2) The office, in partnership with a host institution, shall provide methodology and oversight for a business resource center.

(3) A host institution shall contribute 50% of a business resource center's operating costs through cash or in-kind contributions, unless otherwise provided under Subsection 63M-1-2707[~~(6)~~](7).

(4) The office shall work with the Utah Business [~~Resource Centers~~] Assistance Advisory Board established under Section 63M-1-2706, hereafter referred to in this part as "the board," to provide operational oversight and coordination of the business resource centers established under this part.

(5) (a) A business resource center shall work with state agencies in creating methods to coordinate functions and measure the impact of the efforts provided by the state agencies and the center.

(b) The host institution, state, local and federal governmental entities, quasi-governmental entities, and private entities may:

(i) participate in the activities offered by or through a business resource center; and

(ii) provide personnel or other appropriate links to the center.

(c) (i) Other entities that are not initially involved in the establishment of a business resource center and that are capable of providing supportive services to Utah businesses may apply to the center to become a provider of services at the center.

(ii) Entities identified in Subsections (5)(a) and (b) shall provide the board with a service plan, to include funding, which would be made available or supplied to cover the expenses of their services offered at a business resource center.

(iii) The board shall review each application made under Subsection (5)(c)(i) and make a recommendation for approval by the office as a precondition for providing the service being offered.

(6) A business resource center may:

(a) partner with the Governor's Office of Economic Development, other host institutions, and other entities to develop and establish web-based access to virtual business resource center services over the Internet to assist in establishing and growing businesses in the state, particularly in those situations where traveling to a business resource center site is not practical;

(b) develop a data base and software for:

(i) tracking clients and their progress; and

(ii) tracking responses and services provided by state agencies and evaluating their effectiveness; and

(c) develop outreach programs and services targeted to business clients in rural areas of the state.

(7) The Governor's Office of Economic Development shall make a report by November 1 of each year to the Workforce Services and Community and Economic Development and Business and Labor Interim Committees [~~and the state board of regents~~] on measured performance of economic development programs offered by or through established business resource centers.

Section 2. Section 63M-1-2706 is amended to read:

63M-1-2706. Utah Business Assistance Advisory Board -- Creation -- Membership -- Vacancies -- Chairs.

(1) There is created the Utah Business [~~Resource Centers~~] Assistance Advisory Board, composed of at least [~~nine~~] 13 members appointed by the executive director of the Governor's Office of Economic Development.

(2) (a) The executive director shall appoint:

[~~(a)~~] (i) one member from [~~each~~] three host [~~institution~~] institutions of business resource centers on a rotating basis;

[~~(b)~~] (ii) three members from urban areas in the state; [~~and~~]

[~~(c)~~] (iii) two members from rural areas in the state[~~.~~]; and

(iv) one member from each host institution of a statewide business service provider.

(b) The executive director may appoint ex officio board members who are sponsors of or partners with statewide business server providers.

(3) Each board member shall have a background or expertise in any one or all of the following:

(a) state or local economic development;

(b) business networking, growth, or development;

(c) entrepreneurship;

(d) business management or administration; or

(e) the establishment of partnerships or collaborative efforts with state, local, and federal agencies and institutions, as well as private entities.

(4) (a) The executive director shall appoint board members for four-year terms.

(b) The board shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of these members are staggered so that approximately half of the members are appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the executive director for the unexpired term in the same manner as the vacated member was chosen.

(5) The board shall elect one of its members as a chair of the board for a two-year term.

(6) The board shall meet at the call of the chair, but at least quarterly.

(7) (a) A majority of the members of the board constitute a quorum.

(b) The action of a majority of a quorum constitutes the action of the board.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 3. Section 63M-1-2707 is amended to read:

63M-1-2707. Duties.

The board shall:

(1) assist the office in providing operational oversight, coordination, and performance review and provide advice and improve the effectiveness of state-funded business assistance programs throughout the state as designated by the executive director;

[~~(1)~~] (2) make recommendations to the office on requirements for the requisite certification of each business resource center and staff at each center by the executive director;

[~~(2)~~] (3) make recommendations to the office for certification of the business plans the board is required to review under Subsection 63M-1-2704(5)(c)(iii);

[~~(3)~~] (4) [~~if requested by~~] at the direction of the executive director[~~,~~]:

(a) assist the office in providing operational oversight to and coordination of the business resource centers established under this part; and

(b) work closely with the Governor's Office of Economic Development's Board of Business and Economic Development;

[~~(4)~~] (5) identify issues and make recommendations to the office regarding programs, policies, and procedures that could be implemented by:

(a) business resource centers in fulfilling their duties and responsibilities under Section 63M-1-2705; and

(b) state-funded business service providers;

[~~(5)~~] (6) make budget recommendations to the office regarding the operation and staffing of business resource centers established under this part;

[~~(6)~~] (7) recommend matching fund exceptions under Subsection 63M-1-2704(3);

[~~(7)~~] (8) recommend certification of all non-state funded satellite business resource centers; and

[~~(8)~~] (9) establish metrics to report the performance of economic development output in each region serviced by a business resource center.

CHAPTER 113
H. B. 374
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

DOMESTIC VIOLENCE AMENDMENTS

Chief Sponsor: Bradley G. Last
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill prevents a person arrested for domestic violence from personally contacting the alleged victim while the person is detained in a jail.

Highlighted Provisions:

This bill:

- prevents a person arrested for domestic violence from contacting the alleged victim while the person is detained in a jail; and
- provides a penalty for violation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-36-1, as last amended by Laws of Utah 2010, Chapters 218 and 384
77-36-2.1, as last amended by Laws of Utah 2008, Chapter 3
77-36-2.5, as last amended by Laws of Utah 2010, Chapter 384

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

Section 1. Section 77-36-1 is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" has the same meaning as in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

(d) harassment, as described in Section 76-5-106;

(e) electronic communication harassment, as described in Section 76-9-201;

(f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5a, Sexual Exploitation of Children;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention, as described in Section 76-5-304;

(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;

(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with any of the domestic violence offenses otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or

(p) child abuse as described in Section 76-5-109.1.

(5) "Jail release agreement" means a written agreement:

(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5[~~(1)~~](2).

(6) "Jail release court order" means a written court order:

(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5[~~(1)~~](2).

(7) "Marital status" means married and living together, divorced, separated, or not married.

(8) "Married and living together" means a man and a woman whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.

(10) "Pretrial protective order" means a written order:

(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release pursuant to Subsection 77-36-2.5[~~(2)~~](3)(c), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

(11) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.

(12) "Separated" means a man and a woman who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

(13) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 2. Section 77-36-2.1 is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsection 77-36-2.5[~~(7)~~](8).

Section 3. Section 77-36-2.5 is amended to read:

77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.

(1) (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.

(b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

[~~(1)~~] (2) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release the person is ordered by the court or agrees in writing that until further order of the court, the person will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

[~~(2)~~] (3) (a) The jail release agreement or jail release court order expires at midnight on the day on which the person arrested appears in person or by video for arraignment or an initial appearance.

(b) (i) If criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond the time period under Subsection [~~(2)~~] (3)(a) as provided in Subsection [~~(2)~~] (3)(b)(ii).

(ii) (A) The court may extend a jail release agreement or jail release court order under Subsection [~~(2)~~] (3)(b)(i) to no longer than midnight of the third business day after the arrested person's first court appearance.

(B) If criminal charges are filed against the arrested person within the three business days

under Subsection [~~(2)~~] (3)(b)(ii)(A), the jail release agreement or the jail release court order continues in effect until the arrested person appears in person or by video at the arrested person's next scheduled court appearance.

(c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.

[~~(3)~~] (4) As a condition of release, the court may order the defendant to participate in an electronic or other monitoring program and to pay the costs associated with the program.

[~~(4)~~] (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the release conditions described in Subsection [~~(1)~~] (2)(a) or (c). Upon waiver, those release conditions do not apply to the alleged perpetrator.

(b) A court or magistrate may modify the release conditions described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.

[~~(5)~~] (6) (a) When a person is released pursuant to Subsection [~~(1)~~] (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection [~~(1)~~] (2) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When a person is released pursuant to Subsection [~~(1)~~] (2) or [~~(2)~~] (3) based upon a jail release court order or if a jail release agreement is modified pursuant to Subsection [~~(4)~~] (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.

(c) This Subsection [~~(5)~~] (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

[~~(6)~~] (7) (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection [~~(1)~~] (2) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection [~~(1)~~] (2) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

[~~(7)~~] (8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

[~~(8)~~] (9) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsection [~~(1)~~] (2), and notice that those release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection [~~(1)~~] (2);

(c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

(e) the availability and effect of any waiver of the release conditions; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

[~~(9)~~] (10) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

[~~(a)~~] (b) the release conditions described in Subsection [~~(1)~~] (2) and notice that those release conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to release;

[~~(b)~~] (c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection [~~(1)~~] (2); and

[~~(c)~~] (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest[~~;~~].

[~~(10)~~] (11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the jail release court order or jail release agreement does not expire and continues in effect until the alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.

(b) If, when the alleged perpetrator personally appears in court as required by Section 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow the jail release court order or jail release agreement to expire at midnight on the day of the court appearance or may extend it for good cause.

[~~(11)~~] (12) In addition to the provisions of Subsections [~~(1)~~] (2) through [~~(7)~~] (8), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

CHAPTER 114
H. B. 376
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

SMALL CLAIMS COURT JURISDICTION

Chief Sponsor: Rebecca P. Edwards
Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill allows a defendant in an action in district court to remove it to small claims court if it fits the jurisdictional amounts.

Highlighted Provisions:

This bill:

- allows a defendant in an action in district court to remove it to a small claims court in the same jurisdiction if it is less than $10,000 and the plaintiff agrees;
- requires that the defendant pay the small claims filing fee; and
- provides that the court may not charge the plaintiff a filing fee if the plaintiff appeals the small claims court judgment.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-8-102, as last amended by Laws of Utah 2009, Chapter 147

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

Section 1. Section 78A-8-102 is amended to read:

78A-8-102. Small claims -- Defined -- Counsel not necessary -- Removal from district court -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.

(1) A small claims action is a civil action:

(a) for the recovery of money where:

(i) the amount claimed does not exceed $10,000 including attorney fees but exclusive of court costs and interest; and

(ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed $10,000 including attorney fees but exclusive of court costs and interest.

(2) (a) A defendant in an action filed in the district court that meets the requirement of Subsection (1)(a)(i) may remove, if agreed to by the plaintiff, the action to a small claims court within the same district by:

(i) giving notice, including the small claims filing number, to the district court of removal during the time afforded for a responsive pleading; and

(ii) paying the applicable small claims filing fee.

(b) No filing fee may be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally filed.

[~~(2)~~] (3) The judgment in a small claims action may not exceed $10,000 including attorney fees but exclusive of court costs and interest.

[~~(3)~~] (4) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

[~~(4)~~] (5) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

(i) in person; or

(ii) through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.

[~~(5)~~] (6) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

[~~(6)~~] (7) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

CHAPTER 115
H. B. 391
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

NATIONAL GUARD JOINT FORCES HEADQUARTERS MODIFICATIONS

Chief Sponsor: Val L. Peterson
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies officer duties within the Joint Forces Headquarters of the National Guard.

Highlighted Provisions:

This bill:

- creates a director of joint staff;
- puts the director of joint staff under the adjutant general; and
- provides qualifications.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

39-1-12, as last amended by Laws of Utah 2007, Chapter 173
39-1-18, as last amended by Laws of Utah 2005, Chapter 65

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

Section 1. Section 39-1-12 is amended to read:

39-1-12. Adjutant general -- Appointment -- Term -- Duties.

(1) [~~(a)~~] There shall be one adjutant general appointed by the governor. The adjutant general is chief of staff and holds office for a term of six years, unless terminated by resignation, disability, or for cause as determined by a military court or court-martial.

[~~(b)~~] (2) The person appointed to the office shall be a citizen of Utah and meet the requirements provided in Title 32, United States Code. He shall be a federally recognized commissioned officer of the National Guard of the United States with no fewer than 10 years commissioned service in the Utah National Guard. Active service in the armed forces of the United States may be included in this requirement, if the officer was a member of the Utah National Guard when he entered that service. An officer is no longer eligible to hold the office of adjutant general after becoming 64 years of age.

[~~(2) (a) He shall perform duties as are imposed by the laws of this state and the United States, and by the regulations of the Department of Defense of the United States. However, if any duties imposed by the statutes of this state at any later time conflict with those imposed by the laws of the United States, the duties imposed by the statutes of this state, as far as they conflict, are abrogated.~~]

[~~(b) He shall keep rosters of all active, inactive, and retired officers and enlisted men of the National Guard and shall keep in his office all records, orders, regulations, and papers pertaining to the National Guard and the militia of this state. He shall, when he considers it necessary, at the expense of the state purchase or cause to be printed, and issue to members of the National Guard or other persons, copies of the military law, the various orders of the Department of Defense of the United States, and other literature he considers best for the interests of the service.~~]

[~~(c) He shall cause to be prepared all blanks, books, forms, and reports necessary to carry out the provisions of this chapter. The blanks or forms shall be as identical as possible to those required by the Department of Defense of the United States for use by the regular army or National Guard.~~]

[~~(d) He has, under the direction of the State Armory Board, supervision and charge of all the armories, warehouses, maintenance and repair shops, hangars, small-arms, artillery and aircraft ranges, campsites, concentration areas, lands, training facilities, and military reservations necessary to the military functions of this state. He is responsible for the protection and safety thereof and shall make rules for the maintenance of order, for the enforcement of rules as may be ordered for the operation and the repair, care, and preservation of the facilities and installations belonging to or leased by the state. He may make further improvement as the good of the service requires.~~]

[~~(e) He shall cause to be prepared all blanks, books, forms, notices, and reports to carry out the provisions of the military laws of this state. The blanks, books, forms, notices, and reports shall be as identical as possible to those required by the Department of Defense for use by the Armed Forces of the United States.~~]

[~~(f) He shall make and transmit to the federal government the returns required by the laws of the United States and submit to the governor a certified copy. He shall superintend the preparation of all returns and reports required by the United States from Utah on military matters.~~]

[~~(g) He shall act as agent for all active, inactive, or retired members of the National Guard having claims against the United States for pensions, bounty, back pay, or disability arising from any war, federal service, or training. He shall handle the claims without charge.~~]

[~~(h) He shall, on or before January 1 next preceding the general session of the Legislature, make a full and detailed report to the governor of all transactions of his office, including related expenses, for the preceding year and shall report at other times and on other matters as the governor requires or as he considers advisable.~~]

Section 2. Section 39-1-18 is amended to read:

39-1-18. Director of joint staff -- Assistant adjutant general for the army -- Assistant adjutant general for air -- Commander, land component command -- Officer for permanent duty as personnel officer.

(1) There is authorized a director of joint [~~forces headquarters deputy commander~~] staff.

(a) The adjutant general, with the approval of the governor, may detail the joint forces headquarters deputy commander.

(b) The [~~deputy commander of the~~] director of joint [~~forces headquarters~~] staff shall be a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of the state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all of his time during office hours of the military department to the duties of the office.

(2) There is authorized an assistant adjutant general for the army and an assistant adjutant general for air.

(a) The adjutant general with the approval of the governor may detail the assistant adjutant general for the army or the assistant adjutant general for air for permanent duty.

(b) The assistant adjutant general for the army and the assistant adjutant general for air shall be federally recognized field grade commissioned officers of the Utah National Guard with not less than five years military service in the armed forces of the state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all [~~of his~~] the time during office hours of the military department to the duties of the office.

(3) There is authorized a commander, land component command.

(a) The adjutant general, with the approval of the governor, may detail the commander, land component command.

(b) The commander, land component command shall be a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of the state or of the United States, at lease three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all the time during office hours of the military department to the duties of the office.

[~~(3)~~] (4) The adjutant general, with the approval of the governor, may detail one officer of the Utah National Guard for permanent duty as the personnel officer.

(a) The officer shall be a federally recognized commissioned officer, or former federally recognized commissioned officer, of the Utah National Guard with not less than three years military service in the armed forces of the state or of the United States, one of which shall have been commissioned in the Utah National Guard.

(b) The officer shall hold office at the pleasure of the adjutant general.

(c) The duties of the personnel officer shall be as the adjutant general may direct, to include the normal duty of the staff G-1.

(d) The officer shall devote all [~~of his~~] the time during the office hours of the military department to the duties of the office.

CHAPTER 116
H. B. 399
Passed March 4, 2011
Approved March 21, 2011
Effective May 10, 2011

ENVIRONMENTAL LITIGATION BOND

Chief Sponsor: Michael E. Noel
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill requires a plaintiff requesting a preliminary injunction or an administrative stay to post a bond.

Highlighted Provisions:

This bill:

- requires a plaintiff to post a bond before receiving a preliminary injunction or administrative stay;
- requires an unsuccessful plaintiff to pay damages to defendants who are harmed by a preliminary injunction or administrative stay; and
- provides for an immediate appeal of a court's or agency's refusal to require the bond.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-5-828, Utah Code Annotated 1953

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

Section 1. Section 78B-5-828 is enacted to read:

78B-5-828. Bond required in an environmental action.

(1) As used in this section:

(a) "Administrative stay" means a stay or other temporary remedy issued by an agency under Section 63G-4-405.

(b) "Environmental action" means a cause of action that:

(i) is filed on or after May 10, 2011; and

(ii) seeks judicial review of a final agency action to issue a permit by:

(A) the Department of Natural Resources;

(B) the Department of Transportation; or

(C) the School and Institutional Trust Lands Administration.

(c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in the plaintiff's favor on at least one cause of action.

(2) A plaintiff who obtains a preliminary injunction or administrative stay in an environmental action, but does not ultimately prevail on the merits of the environmental action, is liable for damages sustained by a defendant who:

(a) opposed the preliminary injunction or administrative stay; and

(b) was harmed by the preliminary injunction.

(3) A court may not issue a preliminary injunction and an agency may not grant an administrative stay in an environmental action until the plaintiff posts with the court or the agency a surety bond or cash equivalent:

(a) in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay;

(b) written by a surety licensed to do business in the state; and

(c) payable to each defendant opposing the preliminary injunction or administrative stay in the event the plaintiff does not prevail on the merits of the environmental action.

(4) If there is more than one plaintiff, the court or agency shall establish the amount of the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.

(5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental action, the court shall execute the bond and award damages to each defendant who:

(i) opposed the preliminary injunction or administrative stay; and

(ii) was harmed as a result of its issuance.

(b) If the amount of money secured by the surety bond or cash equivalent:

(i) exceeds the damages awarded, the court or agency shall return the excess to the plaintiff; and

(ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay the remaining damages.

(6) Notwithstanding any other provision of law, a court's or agency's refusal to require the posting of a surety bond or cash equivalent as required by this section is subject to immediate appeal.

CHAPTER 117
H. B. 421
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

USE OF PUBLIC BUILDINGS FOR POLITICAL CAUCUS MEETINGS

Chief Sponsor: Derek E. Brown
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Utah Election Code by requiring a legislative body of a county, municipality, or school district to make facilities under its control available for use by political parties.

Highlighted Provisions:

This bill:

- requires a legislative body of a county, municipality, or school district to make meeting facilities under its control available for political activities if the party requests use of the facility 30 calendar days in advance and the facility is not already scheduled to be in use;
- provides that the charge imposed for the use of a public facility by a political party is limited to the actual cost of custodial services and other services requested by the political party for the use of the facility;
- exempts a convention center, sports arena, or other facility at which conventions or conferences are held from the requirements of the section; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-8-404, as enacted by Laws of Utah 1997, Chapter 24

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

Section 1. Section 20A-8-404 is amended to read:

20A-8-404. Use of public meeting buildings by political parties.

(1) The legislative [~~bodies of counties, municipalities, and school districts may~~] body of a county, municipality, or school district shall make all meeting facilities in buildings under its control available to registered political parties, without discrimination, to be used for political party activities[~~.~~] if:

(a) the political party requests the use of the meeting facility at least 30 calendar days before the day on which the use by the political party will take place; and

(b) the meeting facility is not already scheduled for another purpose at the time of the proposed use.

(2) [~~If~~] Subject to the requirements of Subsection (3), when a legislative body [~~chooses to make~~] makes a meeting [~~facilities~~] facility available under Subsection (1), it may establish terms and conditions for use of [~~those facilities~~] that meeting facility.

(3) The charge imposed for the use of a meeting facility described in Subsection (1) by a registered political party may not exceed the actual cost of:

(a) custodial services for cleaning the meeting facility after the use by the political party; and

(b) any service requested by the political party and provided by the meeting facility.

(4) An entity described in Subsection (1) shall, to the extent possible, avoid scheduling an event in a government building for the same evening as an announced party caucus meeting.

(5) This section does not apply to a publicly owned or operated convention center, sports arena, or other facility at which conventions, conferences, and other gatherings are held and whose primary business or function is to host such conventions, conferences, and other gatherings.

CHAPTER 118
H. B. 450
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

HOSPITAL PROVIDER TAX AMENDMENTS

Chief Sponsor: David Clark
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the Hospital Provider Assessment Act to amend provisions related to the repeal of the assessment.

Highlighted Provisions:

This bill:

- amends provisions related to the repeal of the hospital provider assessment.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-36a-208, as enacted by Laws of Utah 2010, Chapter 179

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

Section 1. Section 26-36a-208 is amended to read:

26-36a-208. Repeal of assessment.

(1) The repeal of the assessment imposed by this chapter shall occur upon the certification by the executive director of the department that the sooner of the following has occurred:

(a) the effective date of any action by Congress that would disqualify the assessment imposed by this chapter from counting towards state Medicaid funds available to be used to determine the federal financial participation;

(b) the effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, or agency of the state, or of the federal government that has the effect of:

(i) disqualifying the assessment from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or

(ii) creating for any reason a failure of the state to use the assessments for the Medicaid program as described in this chapter; and

(c) the effective date of:

(i) an appropriation for any state fiscal year from the General Fund for hospital payments under the state Medicaid program that is less than the amount appropriated for state fiscal year [~~2011~~] 2012;

(ii) the annual revenues of the state General Fund budget return to the level that was appropriated for fiscal year 2008;

(iii) approval of any change in the state Medicaid plan that requires a greater percentage of Medicaid patients to enroll in Medicaid managed care plans than what is required [~~on January 1, 2010;~~]:

(A) to implement accountable care organizations in the state plan; and

(B) by other managed care enrollment requirements in effect on or before January 1, 2012;

(iv) a division change in rules that reduces any of the following below July 1, [~~2010~~] 2011 payments:

(A) aggregate hospital inpatient payments;

(B) adjustment payment rates; or

(C) any cost settlement protocol; or

(v) a division change in rules that reduces the aggregate outpatient payments below July 1, 2011 payments.

(2) If the assessment is repealed under Subsection (1), money in the fund that was derived from assessments imposed by this chapter, before the determination made under Subsection (1), shall be disbursed under Section 26-36a-205 to the extent federal matching is not reduced due to the impermissibility of the assessments. Any funds remaining in the special revenue fund shall be refunded to the hospitals in proportion to the amount paid by each hospital.

CHAPTER 119
H. B. 451
Passed March 9, 2011
Approved March 21, 2011
Effective July 1, 2011

TOBACCO SETTLEMENT FUNDS AMENDMENT

Chief Sponsor: David Litvack
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill changes the deposit of 40% of tobacco settlement funds from the permanent state trust fund to the General Fund.

Highlighted Provisions:

This bill:

- diverts 40% of tobacco settlement funds from the permanent state trust fund to the General Fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect July 1, 2011.

Utah Code Sections Affected:

AMENDS:

51-9-202, as last amended by Laws of Utah 2010, Chapters 219 and 413

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

Section 1. Section 51-9-202 is amended to read:

51-9-202. Permanent state trust fund.

(1) Until July 1, 2003, 50% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(2) On and after July 1, 2003 and until July 1, 2004 20% of the funds of any kind received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(3) On and after July 1, 2004 and until July 1, 2005, 30% of all funds of any kind received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers shall be deposited into the General Fund Budget Reserve Account created in Section 63J-1-312.

(4) On and after July 1, 2005 and until July 1, 2007, 25% of all funds of any kind received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(5) On and after July 1, 2007, 40% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998, shall be deposited into the [~~permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4. Notwithstanding the direction in this Subsection (5), for fiscal year 2011, the first $11,350,900 shall be deposited in the~~] General Fund and the remaining funds deposited as directed.

(6) Funds in the permanent state trust fund shall be deposited or invested pursuant to Section 51-7-12.1.

(7) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and dividends earned annually from the permanent state trust fund shall be deposited in the General Fund. There shall be transferred on an ongoing basis from the General Fund to the permanent state trust fund created under Utah Constitution Article XXII, Section 4, an amount equal to 50% of the interest and dividends earned annually from the permanent state trust fund. The amount transferred into the fund under this Subsection (7)(a) shall be treated as principal.

(b) Any annual interest or dividends earned from the permanent state trust fund that remain in the General Fund after Subsection (7)(a) may be appropriated by the Legislature.

(c) Any realized or unrealized gains or losses on investments in the permanent state trust fund shall remain in the permanent state trust fund.

(8) This section does not apply to funds deposited under Chapter 9, Part 3, Infrastructure and Economic Diversification Investment Account and Deposit of Certain Severance Taxes into Permanent State Trust Fund Act, into the permanent state trust fund.

Section 2. Effective date.

This bill takes effect July 1, 2011.

CHAPTER 120
H. B. 482
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

LONG-TERM CARE FACILITY - MEDICAID CERTIFICATION FOR BED CAPACITY AMENDMENTS

Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Luz Robles

LONG TITLE

General Description:

This bill amends provisions of the Medical Assistance Act regarding Medicaid certification of nursing care facility programs.

Highlighted Provisions:

This bill:

- allows the Division of Healthcare Financing within the Department of Health, under certain conditions, to renew Medicaid certification of a nursing care facility not currently certified; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-503, as last amended by Laws of Utah 2008, Chapter 347

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

Section 1. Section 26-18-503 is amended to read:

26-18-503. Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.

(1) (a) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) The division may renew Medicaid certification of a nursing care facility program that is not currently certified if:

(i) since the day on which the program last operated with Medicaid certification:

(A) the physical facility where the program operated has functioned solely and continuously as a nursing care facility; and

(B) the owner of the program has not, under this section or Section 26-18-505, transferred to another nursing care facility program the license for any of the Medicaid beds in the program; and

(ii) the number of beds granted renewed Medicaid certification does not exceed the number of beds certified at the time the program last operated with Medicaid certification, excluding a period of time where the program operated with temporary certification under Subsection 26-18-504(4).

(2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:

(i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program;

(ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4);

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and

(iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

(i) is not owned in whole or in part by the previous nursing care facility program; or

(ii) is not a successor in interest of the previous nursing care facility program.

(3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:

(a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;

(b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;

(c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years;

(d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;

(e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and

(f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).

(4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must give written assurances satisfactory to the director or his designee that:

(i) no third party has a legitimate claim to operate the certified program;

(ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and

(iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

(b) If a finding is made under the provisions of Subsection (4)(a)(iii):

(i) the certified program shall immediately surrender its Medicaid certification and comply with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and

(ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).

(5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional Medicaid certification when requested by a nursing care facility or other interested party if there is insufficient bed capacity with current certified programs in a service area. A determination of insufficient bed capacity shall be based on the nursing care facility or other interested party providing reasonable evidence of an inadequate number of beds in the county or group of counties impacted by the requested Medicaid certification based on:

(i) current demographics which demonstrate nursing care facility occupancy levels of at least 90% for all existing and proposed facilities within a prospective three-year period;

(ii) current nursing care facility occupancy levels of 90%; or

(iii) no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification.

(b) In addition to the requirements of Subsection (5)(a), a nursing care facility program must demonstrate by an independent analysis that the nursing care facility can financially support itself at an after tax break-even net income level based on projected occupancy levels.

(c) When making a determination to certify additional beds or an additional nursing care facility program under Subsection (5)(a):

(i) the director shall consider whether the nursing care facility will offer specialized or unique services that are underserved in a service area;

(ii) the director shall consider whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); and

(iii) the director may consider how to add additional capacity to the long-term care delivery system to best meet the needs of Medicaid recipients.

(6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility property reimbursement methodology to:

(a) beginning July 1, 2008, only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:

(i) actual occupancy; or

(ii) (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or

(B) for a rural nursing care facility, 65% of total bed capacity; and

(b) beginning July 1, 2008, not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.

CHAPTER 121
H. B. 489
Passed March 4, 2011
Approved March 21, 2011
Effective May 10, 2011

HOUSING AUTHORITY APPLICATION PROCESS

Chief Sponsor: Gage Froerer
Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:

This bill provides for the creation of a uniform online application for the housing choice voucher program when there are two or more housing authorities in a first or second class county.

Highlighted Provisions:

This bill:

- provides that if there are two or more housing authorities established in a county of the first or second class, then those authorities shall create a uniform online application for their housing choice voucher program with links to each of the housing authorities within the county; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-609, as last amended by Laws of Utah 2003, Chapter 95

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

Section 1. Section 9-4-609 is amended to read:

9-4-609. Powers of housing authority.

(1) Each authority [~~shall have~~] has perpetual succession and all the powers necessary [~~or convenient~~] to carry out and effectuate the purposes and provisions of this part.

(2) [~~Any~~] An authority may:

(a) sue and be sued;

(b) have a seal and alter it;

(c) make and execute contracts and other instruments necessary [~~or convenient~~] to the exercise of its powers;

(d) make, amend, and repeal bylaws and rules;

(e) within its area of operation, prepare, carry out, and operate projects and provide for the acquisition, construction, reconstruction, rehabilitation, improvement, extension, alteration or repair of any project;

(f) undertake and carry out studies and analyses of housing needs within its area of operation and ways of meeting [~~these~~] those needs, including data with respect to population and family groups and its distribution according to income groups, the amount and quality of available housing, including accessible housing, and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and meeting these needs;

(g) (i) make the results of studies and analyses available to the public and the building, housing, and supply industries; and

(ii) engage in research and disseminate information on housing programs;

(h) utilize, contract with, act through, assist, and cooperate or deal with any person, agency, institution, or organization, public or private, for the provision of services, privileges, works, or facilities, or in connection with its projects;

(i) notwithstanding anything to the contrary contained in this part or in any other provision of law[~~,~~]:

(i) agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects[~~,~~];

(ii) include in any contract awarded or entered into in connection with a project stipulations requiring that the contractor and all subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor[~~,~~]; and

(iii) comply with any conditions attached to the financial aid of the project;

(j) lease, rent, sell, or lease with the option to purchase any dwellings, lands, buildings, structures, or facilities embraced in [~~any~~] a project;

(k) subject to the limitations contained in this part with respect to the rental or charges for dwellings in housing projects, establish and revise the rents or charges [~~therefor~~] for the dwellings;

(l) own, hold, and improve real or personal property;

(m) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in it;

(n) sell, lease, exchange, transfer, assign, pledge, or dispose of [~~any~~] real or personal property or any interest in it;

(o) make loans for the provision of housing for occupancy by persons of medium and low income;

(p) make loans or grants for the development and construction of accessible housing;

(q) insure or provide for the insurance, in stock or mutual companies, of [~~any~~] real or personal property or operations of the authority against any risks or hazards;

(r) procure or agree to the procurement of government insurance or guarantees of the payment of any bonds, in whole or in part, issued by the authority, including the power to pay premiums on [~~any~~] the insurance;

(s) invest [~~any funds~~] money held in reserves, sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest [~~funds~~] money subject to their control;

(t) redeem its bonds at the redemption price established or purchase its bonds at less than redemption price, with all bonds [~~so~~] that are redeemed or purchased to be canceled;

(u) within its area of operation, determine where blighted areas exist or where there is unsafe, insanitary, or overcrowded housing;

(v) make studies and recommendations relating to the problem of clearing, replanning, and reconstructing blighted areas, and the problem of eliminating unsafe, insanitary, or overcrowded housing and providing dwelling accommodations and maintaining a wholesome living environment for persons of medium and low income, and cooperate with any public body or the private sector in action taken in connection with those problems;

(w) acting through one or more commissioners or other persons designated by the authority, conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(x) administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and issue commissions for the examination of witnesses outside the state who are unable to appear before the authority or are excused from attendance;

(y) make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist that are dangerous to the public health, morals, safety, or welfare; and

(z) exercise all or any part or combination of the powers granted under this part.

(3) (a) If there are two or more housing authorities established within a county of the first or second class, then those housing authorities shall create a uniform online application for the housing choice voucher program with links to each of the housing authorities within the county.

(b) As used in Subsection (3)(a), "housing choice voucher program" means the federal government's housing assistance program administered by a housing authority, which enables low-income families, the elderly, and the disabled to secure decent, safe, and sanitary housing in the private market.

[~~(3)~~] (4) No provision of law with respect to the acquisition, operation, or disposition of property by other public bodies is applicable to an authority unless the Legislature specifically states that it is.

CHAPTER 122
H. B. 492
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

WASHINGTON COUNTY VETERANS' HOME

Chief Sponsor: Don L. Ipson
Senate Sponsor: Stephen H. Urquhart
Cosponsors: David Clark
Bradley M. Daw
Brad L. Dee
Susan Duckworth
Francis D. Gibson
Keith Grover
Wayne A. Harper
Christopher N. Herrod
Gregory H. Hughes
Bradley G. Last
Rebecca D. Lockhart
Ronda Rudd Menlove
Michael T. Morley
Michael E. Noel
Curtis Oda
Patrick Painter
Val L. Peterson
Holly J. Richardson
Stephen E. Sandstrom
Evan J. Vickers
Christine F. Watkins
Bill Wright

LONG TITLE

General Description:

This bill appropriates money for a veterans' home in Washington County.

Highlighted Provisions:

This bill appropriates:

- for the fiscal year beginning July 1, 2011, and ending June 30, 2012, to the Capitol Budget – Capitol Development, as a one-time appropriation:
  - from the Veterans' Nursing Home Reimbursement Restricted Fund, $6,350,000.

Monies Appropriated in this Bill:

This bill appropriates:

- $6,350,000 for the fiscal year beginning July 1, 2011, and ending June 30, 2012.

Other Special Clauses:

None

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Appropriations for construction of a Veterans' home in Washington County.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30, 2012. These sums are additions to amounts previously appropriated for fiscal year 2012.

To the Capitol Budget – Capitol Development

From the Veterans' Nursing Home Reimbursement Fund, One-time $6,350,000

Schedule of Programs:

Veterans' Nursing Home – Washington County $6,350,000

CHAPTER 123
H. B. 493
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

UTAH COUNTY VETERANS' HOMES

Chief Sponsor: Don L. Ipson
Senate Sponsor: Margaret Dayton
Cosponsors: David Clark
Bradley M. Daw
Brad L. Dee
Susan Duckworth
Francis D. Gibson
Keith Grover
Wayne A. Harper
Christopher N. Herrod
Gregory H. Hughes
Bradley G. Last
Rebecca D. Lockhart
Ronda Rudd Menlove
Michael T. Morley
Michael E. Noel
Curtis Oda
Patrick Painter
Val L. Peterson
Holly J. Richardson
Stephen E. Sandstrom
Dean Sanpei
Evan J. Vickers
Christine F. Watkins
Bill Wright

LONG TITLE

General Description:

This bill appropriates money for a veterans' home in Utah County.

Highlighted Provisions:

This bill appropriates for the fiscal year beginning July 1, 2011, and ending June 30, 2012:

- to the Division of Facilities and Construction Management, as a one-time appropriation:
  - from the Veterans' Nursing Home Reimbursement Restricted Fund, $6,350,000.

Monies Appropriated in this Bill:

This bill appropriates:

- $6,350,000 for the fiscal year beginning July 1, 2011, and ending June 30, 2012.

Other Special Clauses:

None

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Appropriations for construction of a veterans' home in Utah County.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30, 2012. These sums are additions to amounts previously appropriated for fiscal year 2012.

To the Capitol Budget – Capitol Development
From the Veterans' Nursing Home Reimbursement Fund, One-time $6,350,000

Schedule of Programs:
Veterans' Nursing Home – Utah County $6,350,000

CHAPTER 124
H. B. 495
Passed March 10, 2011
Approved March 21, 2011
Effective July 1, 2011

ANIMAL CONTROL MODIFICATIONS

Chief Sponsor: John G. Mathis
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Cat and Dog Community Spay and Neuter Program Restricted Account Act by moving control of the restricted account from the Department of Health to the Department of Agriculture and by changing the requirements to receive funding from the restricted account.

Highlighted Provisions:

This bill:

- provides control of the Cat and Dog Community Spay and Neuter Program Restricted Account to the Department of Agriculture;
- modifies the requirements to receive funding from the restricted account; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

RENUMBERS AND AMENDS:

4-40-101, (Renumbered from 26-48-101, as enacted by Laws of Utah 2006, Chapter 280)

4-40-102, (Renumbered from 26-48-102, as last amended by Laws of Utah 2008, Chapters 382 and 389)

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

Section 1. Section 4-40-101, which is renumbered from Section 26-48-101 is renumbered and amended to read:

CHAPTER 40. CAT AND DOG COMMUNITY SPAY AND NEUTER PROGRAM RESTRICTED ACCOUNT ACT

[~~26-48-101~~]. 4-40-101. Title.

This chapter is known as the "Cat and Dog Community Spay and Neuter Program Restricted Account Act."

Section 2. Section 4-40-102, which is renumbered from Section 26-48-102 is renumbered and amended to read:

[~~26-48-102~~]. 4-40-102. Cat and Dog Community Spay and Neuter Program Restricted Account -- Interest -- Use of contributions and interest.

(1) There is created within the General Fund the Cat and Dog Community Spay and Neuter Program Restricted Account.

(2) The account shall be funded by contributions deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account in accordance with Section 59-10-1310.

(3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account shall earn interest.

(b) Interest earned on the Cat and Dog Community Spay and Neuter Program Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account.

(4) The [~~department~~] Department of Agriculture shall distribute contributions and interest deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account to one or more organizations that:

(a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or

(b) operate as a city or county animal shelter.

[~~(b) operate a mobile spay and neuter clinic for cats and dogs;~~]

[~~(c) provide annual spay and neuter services at the mobile spay and neuter clinic described in Subsection (4)(b):~~]

[~~(i) to one or more communities in at least 20 counties in the state; and~~]

[~~(ii) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act; and~~]

[~~(d) (i) spay and neuter cats and dogs owned by persons having low incomes; and~~]

[~~(ii) have established written guidelines for determining what constitutes a person having a low income in accordance with any rules made by the department as authorized by Subsection (5)(c).~~]

(5) (a) An organization described in Subsection (4) may apply to the department to receive a distribution in accordance with Subsection (4).

(b) An organization that receives a distribution from the department in accordance with Subsection (4):

(i) shall expend the distribution only to spay or neuter dogs and cats:

(A) owned by persons having low incomes; and

(B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act; and

[~~(C) through a statewide voucher program; and~~]

[~~(D) at a location that:~~]

[~~(I) is not a mobile spay and neuter clinic; and~~]

[~~(II) does not receive any funding from a governmental entity; and~~]

(ii) may not expend the distribution for any administrative cost relating to an expenditure authorized by Subsection (5)(b)(i).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules:

(i) providing procedures and requirements for an organization to apply to the department to receive a distribution in accordance with Subsection (4); and

(ii) to define what constitutes a person having a low income.

Section 3. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 125
S. B. 15
Passed February 4, 2011
Approved March 21, 2011
Effective May 10, 2011

SURETY REQUIREMENTS FOR MINING

Chief Sponsor: Dennis E. Stowell
House Sponsor: Susan Duckworth

LONG TITLE

General Description:

This bill addresses surety requirements for mining operations.

Highlighted Provisions:

This bill:

- requires the Board of Oil, Gas, and Mining to annually adopt a figure representing the average cost of reclamation per acre; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-8-14, as last amended by Laws of Utah 2003, Chapter 35

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

Section 1. Section 40-8-14 is amended to read:

40-8-14. Surety requirement -- Liability of small mining operations for failure to reclaim -- Forfeiture of surety.

(1) (a) After receiving notification that a notice of intention for mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.

(b) In determining the amount of surety under this section, the division may use the average cost of reclamation per acre.

(c) The board shall annually establish a figure representing the average cost of reclamation per acre after receiving a presentation from the division concerning the average cost of reclamation per acre and providing opportunity for public comment.

(2) (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.

(b) In determining the amount of surety to be provided, the division shall consider:

(i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(ii) the nature, extent, and duration of operations under the approved notice.

(c) The division shall approve a fixed amount estimated to be required to complete reclamation at any point in time covered by the notice of intent.

(d) (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.

(ii) The costs shall be adjusted to reflect the nature and scope of activities in the affirmative statement filed under Subsection 40-8-18(4).

(e) (i) In determining the form of surety to be provided by the operator, the division shall approve a method acceptable to the operator consistent with the requirements of this chapter.

(ii) The form of surety that the operator may provide includes, but is not limited to, the following:

[~~(i)~~] (A) collateral;

[~~(ii)~~] (B) a bond or other form of insured guarantee;

[~~(iii)~~] (C) deposited securities; or

[~~(iv)~~] (D) cash.

(3) (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.

(b) In making this decision, the board shall consider:

(i) the operator's:

(A) financial status;

(B) assets within the state;

(C) past performance in complying with contractual agreements; and

(D) facilities available to carry out the planned work;

(ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(iii) the nature, extent, and duration of operations under the approved notice.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until liability, in part, or in its entirety, is released by the division.

(6) (a) If the operator of a mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.

(b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.

(c) If surety or a bond has been filed with the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing and transmit it to the agency together with a request that the necessary forfeiture action be taken.

(d) The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant.

CHAPTER 126
S. B. 20
Passed February 2, 2011
Approved March 21, 2011
Effective May 10, 2011

MANAGEMENT OF WATER RIGHTS AMENDMENTS

Chief Sponsor: Dennis E. Stowell
House Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill addresses the management of water rights in a critical management area.

Highlighted Provisions:

This bill:

- allows a local district to hold certain water rights for recharge;
- addresses the requirements of a groundwater management plan;
- provides that artificially recharging a groundwater basin is a beneficial use of water in a critical management area; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-202, as last amended by Laws of Utah 2010, Chapters 150 and 159
73-5-15, as last amended by Laws of Utah 2009, Chapter 388

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

Section 1. Section 17B-1-202 is amended to read:

17B-1-202. Local district may be created -- Services that may be provided -- Limitations.

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

(i) the operation of an airport;

(ii) the operation of a cemetery;

(iii) fire protection, paramedic, and emergency services;

(iv) garbage collection and disposal;

(v) health care, including health department or hospital service;

(vi) the operation of a library;

(vii) abatement or control of mosquitos and other insects;

(viii) the operation of parks or recreation facilities or services;

(ix) the operation of a sewage system;

(x) street lighting;

(xi) the construction and maintenance of a right-of-way, including:

(A) a curb;

(B) a gutter;

(C) a sidewalk;

(D) a street;

(E) a road;

(F) a water line;

(G) a sewage line;

(H) a storm drain;

(I) an electricity line;

(J) a communications line; or

(K) a natural gas line;

(xii) transportation, including public transit and providing streets and roads;

(xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;

(xiv) in accordance with Subsection (1)(c), the development and execution of a groundwater management plan in cooperation with and approved by the state engineer in accordance with Section 73-5-15;

(xv) law enforcement service; or

(xvi) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

(c) A groundwater management plan described in Subsection (1)(a)(xiv) may include the banking of groundwater rights by a local district in a critical management area as defined in Section 73-5-15 following the adoption of a groundwater management plan by the state engineer under Section 73-5-15.

(i) A local district may manage the groundwater rights it acquires under Subsection 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan described in this Subsection (1)(c).

(ii) A groundwater right held by a local district to satisfy the provisions of a groundwater

management plan is not subject to the forfeiture provisions of Section 73-1-4.

(iii) (A) A local district may divest itself of a groundwater right subject to a determination that the groundwater right is not required to facilitate the groundwater management plan described in this Subsection (1)(c).

(B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section 73-1-4 beginning on the date of divestiture.

(iv) Upon a determination by the state engineer that an area is no longer a critical management area, a water right held by the local district is subject to Section 73-1-4.

(v) A local district created in accordance with Subsection (1)(a)(xiv) to develop and execute a groundwater management plan may hold or acquire a right to surface waters that are naturally tributary to the groundwater basin subject to the groundwater management plan if the surface waters are appropriated in accordance with Title 73, Water and Irrigation, and used in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

(i) sewage system; or

(ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

(a) paramedic service; and

(b) emergency service, including hazardous materials response service.

(7) A local district created before May 11, 2010, authorized to provide the construction and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection (1)(a)(xi) on or after May 11, 2010.

Section 2. Section 73-5-15 is amended to read:

73-5-15. Groundwater management plan.

(1) As used in this section:

(a) "Critical management area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield.

(b) "Safe yield" means the amount of groundwater that can be withdrawn from a groundwater basin over a period of time without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical and chemical integrity.

(2) (a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.

(b) The objectives of a groundwater management plan are to:

(i) limit groundwater withdrawals to safe yield;

(ii) protect the physical integrity of the aquifer; and

(iii) protect water quality.

(c) The state engineer shall adopt a groundwater management plan for a groundwater basin if more than [~~1/3~~] one-third of the water right owners in the groundwater basin request that the state engineer adopt a groundwater management plan.

(3) (a) In developing a groundwater management plan, the state engineer may consider:

(i) the hydrology of the groundwater basin;

(ii) the physical characteristics of the groundwater basin;

(iii) the relationship between surface water and groundwater, including whether the groundwater

should be managed in conjunction with hydrologically connected surface waters;

(iv) the conjunctive management of water rights to facilitate and coordinate the lease, purchase, or voluntary use of water rights subject to the groundwater management plan;

[~~(iv)~~] (v) the geographic spacing and location of groundwater withdrawals;

[~~(v)~~] (vi) water quality;

[~~(vi)~~] (vii) local well interference; and

[~~(vii)~~] (viii) other relevant factors.

(b) The state engineer shall base the provisions of a groundwater management plan on the principles of prior appropriation.

(c) (i) The state engineer shall use the best available scientific method to determine safe yield.

(ii) As hydrologic conditions change or additional information becomes available, safe yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).

(4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a groundwater basin shall be limited to the basin's safe yield.

(ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer shall:

(A) determine the groundwater basin's safe yield; and

(B) adopt a groundwater management plan for the groundwater basin.

(iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.

(iv) A groundwater management plan shall include a list of each groundwater right in the proposed groundwater management area known to the state engineer identifying the water right holder, the land to which the groundwater right is appurtenant, and any identification number the state engineer uses in the administration of water rights.

(b) When adopting a groundwater management plan for a critical management area, the state engineer shall, based on economic and other impacts to an individual water user or a local community caused by the implementation of safe yield limits on withdrawals, allow gradual implementation of the groundwater management plan.

(c) (i) In consultation with the state engineer, water users in a groundwater basin may agree to participate in a voluntary arrangement for managing withdrawals at any time, either before or after a determination that groundwater withdrawals exceed the groundwater basin's safe yield.

(ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other law.

(iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.

(5) To adopt a groundwater management plan, the state engineer shall:

(a) give notice as specified in Subsection (7) at least 30 days before the first public meeting held in accordance with Subsection (5)(b):

(i) that the state engineer proposes to adopt a groundwater management plan;

(ii) describing generally the land area proposed to be included in the groundwater management plan; and

(iii) stating the location, date, and time of each public meeting to be held in accordance with Subsection (5)(b);

(b) hold one or more public meetings in the geographic area proposed to be included within the groundwater management plan to:

(i) address the need for a groundwater management plan;

(ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;

(iii) address safe yield and any other subject that may be included in the groundwater management plan;

(iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and

(v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

(c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;

(d) (i) at least 60 days prior to final adoption of the groundwater management plan, publish notice:

(A) that a draft of the groundwater management plan has been proposed; and

(B) specifying where a copy of the draft plan may be reviewed; and

(ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

(e) provide notice of the adoption of the groundwater management plan.

(6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.

(7) (a) A notice required by this section shall be:

(i) published:

(A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and

(B) in accordance with Section 45-1-101 for two weeks;

(ii) published conspicuously on the state engineer's [~~Internet~~] website; and

(iii) mailed to each of the following that has within its boundaries a portion of the land area to be included within the proposed groundwater management plan:

(A) county;

(B) incorporated city or town;

(C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;

(D) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

(E) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

(F) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

(G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

(H) special service district providing water, sewer, drainage, or flood control services, under Title 17D, Chapter 1, Special Service District Act;

(I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and

(J) conservation district, under Title 17D, Chapter 3, Conservation District Act.

(b) A notice required by this section is effective upon substantial compliance with Subsections (7)(a)(i) through (iii).

(8) A groundwater management plan may be amended in the same manner as a groundwater management plan may be adopted under this section.

(9) The existence of a groundwater management plan does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.

(10) (a) A person aggrieved by a groundwater management plan may challenge any aspect of the groundwater management plan by filing a complaint within 60 days after the adoption of the groundwater management plan in the district court for any county in which the groundwater basin is found.

(b) Notwithstanding Subsection (9), a person may challenge the components of a groundwater management plan only in the manner provided by Subsection (10)(a).

(c) An action brought under this Subsection (10) is reviewed de novo by the district court.

(d) A person challenging a groundwater management plan under this Subsection (10) shall join the state engineer as a defendant in the action challenging the groundwater management plan.

(e) (i) Within 30 days after the day on which a person files an action challenging any aspect of a groundwater management plan under Subsection (10)(a), the person filing the action shall publish notice of the action:

(A) in a newspaper of general circulation in the county in which the district court is located; and

(B) in accordance with Section 45-1-101 for two weeks.

(ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for two consecutive weeks.

(iii) The notice required by Subsection (10)(e)(i) shall:

(A) identify the groundwater management plan the person is challenging;

(B) identify the case number assigned by the district court;

(C) state that a person affected by the groundwater management plan may petition the district court to intervene in the action challenging the groundwater management plan; and

(D) list the address for the clerk of the district court in which the action is filed.

(iv) (A) Any person affected by the groundwater management plan may petition to intervene in the action within 60 days after the day on which notice is last published under Subsections (10)(e)(i) and (ii).

(B) The district court's treatment of a petition to intervene under this Subsection (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

(v) A district court in which an action is brought under Subsection (10)(a) shall consolidate all actions brought under that subsection and include in the consolidated action any person whose petition to intervene is granted.

(11) A groundwater management plan adopted or amended in accordance with this section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(12) (a) Recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.

(b) In a critical management area, the artificial recharge of a groundwater basin that uses surface water naturally tributary to the groundwater basin by a local district created under Subsection 17B-1-202(1)(a)(xiv), in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, constitutes a beneficial use of the water under Section 73-1-3 if:

(i) the recharge is done during the time the area is designated as a critical management area;

(ii) the recharge is done with a valid recharge permit;

(iii) the recharged water is not recovered under a recovery permit; and

(iv) the recharged water is used to replenish the groundwater basin.

(13) Nothing in this section may be interpreted to require the development, implementation, or consideration of a groundwater management plan as a prerequisite or condition to the exercise of the state engineer's enforcement powers under other law, including powers granted under Section 73-2-25.

(14) A groundwater management plan adopted in accordance with this section may not apply to the dewatering of a mine.

(15) (a) A groundwater management plan adopted by the state engineer before May 1, 2006, remains in force and has the same legal effect as it had on the day on which it was adopted by the state engineer.

(b) If a groundwater management plan that existed before May 1, 2006, is amended on or after May 1, 2006, the amendment is subject to this section's provisions.

CHAPTER 127
S. B. 23
Passed February 8, 2011
Approved March 21, 2011
Effective May 10, 2011

STATE HIGHWAY SYSTEM MODIFICATIONS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Julie Fisher

LONG TITLE

General Description:

This bill modifies the Designation of State Highways Act by amending the description of four state highways.

Highlighted Provisions:

This bill:

- modifies the description of SR-7, SR-9, SR-79, and SR-145; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-4-106, as last amended by Laws of Utah 2010, Chapter 199
72-4-113, as last amended by Laws of Utah 2006, Chapter 79
72-4-120, as last amended by Laws of Utah 2001, Chapter 92

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

Section 1. Section 72-4-106 is amended to read:

72-4-106. State highways -- SR-6 to SR-10.

State highways include:

(1) SR-6. From the Utah-Nevada state line easterly through Delta and Tintic Junction to the northbound ramps of the North Santaquin Interchange of Route 15; then beginning again at the Moark Connection Interchange of Route 15 easterly through Spanish Fork Canyon and Price to Route 70 west of Green River.

(2) SR-7. From Route 15 in St. George easterly via Southern Parkway to [~~River Road~~] Airport Parkway.

(3) SR-8. From Dixie Downs Road to Route 18 in St. George on Sunset Boulevard.

(4) SR-9. From Route 15 at Harrisburg Junction easterly to Zion National Park south boundary [~~through the~~], and from Zion National Park east boundary to Route 89 at Mt. Carmel Junction.

(5) SR-10. From a junction with Route 70 east of Fremont Junction northeasterly to Route 55 in Price.

Section 2. Section 72-4-113 is amended to read:

72-4-113. State highways -- SR-71 to SR-80.

State highways include:

(1) SR-71. From Route 154 in Riverton easterly to Seventh East Street in Draper; then northerly on Seventh East and Ninth East Streets to Route 186 in Salt Lake City.

(2) SR-72. From Route 24 in Loa northerly to a junction with Route 70 and Route 10 near Fremont Junction.

(3) SR-73. From Route 36 northeast of St. John Station southeasterly on Five Mile Pass; then northeasterly to Route 89 in Lehi.

(4) SR-74. From Route 89 in American Fork northerly to 200 feet south of the intersection with Canyon Crest Road in Alpine.

(5) SR-75. From Route 15 northwest of Springville easterly to Route 89 near Ironton.

(6) SR-76. From Route 70 easterly to old Fremont Junction on Route 72.

(7) SR-77. From Route 147 north of Benjamin north through Barney Corner; then easterly to Route 89 in Springville.

(8) SR-78. From Route 15 at the Mills Junction Interchange northerly to west of Levan; then east to Route 28 in Levan.

(9) SR-79. From Route [~~126~~] 108 easterly on Thirty-first Street in Ogden to the lane separation, then on eastbound lane only to Route 89; then easterly on Thirtieth Street to Route 203; beginning again at Thirtieth Street and Route 89 then westerly on the westbound lane only to merge with eastbound lanes.

(10) SR-80. From the Utah-Nevada state line in Wendover to the Utah-Wyoming state line west of Evanston, Wyoming, on Interstate 80.

Section 3. Section 72-4-120 is amended to read:

72-4-120. State highways -- SR-141 to SR-151.

State highways include:

(1) SR-141. From Route 6 in Genola to Route 147 west of Payson.

(2) SR-142. From Route 23 near Newton to Clarkston; then easterly through Trenton to Route 91 in Richmond.

(3) SR-143. From Route 15 west of Parowan easterly through Parowan, then southerly to the Panguitch Lake Road, then easterly and northerly coincident with the Panguitch Lake Road to Route 89 in Panguitch.

(4) SR-144. From Route 92 in American Fork Canyon northerly to Tibble Fork Reservoir.

(5) SR-145. From Route [~~15 east on Main Street in American Fork to Route 89~~] 68 in Saratoga

Springs easterly on Pioneer Crossing to Route 89 in American Fork.

(6) SR-146. From Route 89 at Pleasant Grove northerly to Route 92 near the mouth of American Fork Canyon.

(7) SR-147. From Route 141, McBeth Corner; then northerly four miles; then east approximately three miles to Benjamin; then north approximately one mile; then easterly crossing Route 89 one mile; then north to Mapleton; then west to Route 89.

(8) SR-148. From Route 14 north to Cedar Breaks National Monument south boundary.

(9) SR-149. From Route 40 at Jensen northerly to Dinosaur National Monument boundary.

(10) SR-150. From Route 32 in Kamas easterly to Mirror Lake and northerly to Utah-Wyoming state line.

(11) SR-151. From Route 154 east on 10400 South Street to 1300 West Street; then southeasterly to 10600 South Street; then east on 10600 South Street to Route 15.

CHAPTER 128
S. B. 26
Passed February 2, 2011
Approved March 21, 2011
Effective May 10, 2011

WATER LAW MODIFICATIONS

Chief Sponsor: Margaret Dayton
House Sponsor: Patrick Painter

LONG TITLE

General Description:

This bill addresses the filing of a certificate of appropriation of water.

Highlighted Provisions:

This bill:

- makes the filing of a certificate of appropriation of water with the county recorder permissive, rather than mandatory; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-17, as last amended by Laws of Utah 2010, Chapter 108

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

Section 1. Section 73-3-17 is amended to read:

73-3-17. Certificate of appropriation -- Evidence.

(1) Upon [~~it being made to appear to~~] the satisfaction of the state engineer that an appropriation, a permanent change of point of diversion, place or purpose of use, or a fixed time change authorized by Section 73-3-30 has been perfected in accordance with the application, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16 or 73-3-30, the state engineer shall issue a certificate, in duplicate, setting forth:

(a) the name and post-office address of the person by whom the water is used;

(b) the quantity of water in acre-feet or the flow in second-feet appropriated;

(c) the purpose for which the water is used;

(d) the time during which the water is to be used each year;

(e) the name of the stream or water source:

(i) from which the water is diverted; or

(ii) within which an instream flow is maintained;

(f) the date of the appropriation or change; and

(g) other information that defines the extent and conditions of actual application of the water to a beneficial use.

(2) A certificate issued on an application for one of the following types of projects need show no more than the facts shown in the proof submitted under Section 73-3-16:

(a) [~~projects~~] a project constructed according to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

(b) a federal [~~projects~~] project constructed by the United States Bureau of Reclamation, referred to in Section 73-3-16; and

(c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public water supplier.

(3) A certificate under this section does not extend the rights described in the application.

(4) Failure to file proof of appropriation or proof of change of the water on or before the date set therefor [~~shall cause~~] causes the application to lapse.

(5) One copy of a certificate issued under this section shall be filed in the office of the state engineer and the other shall be delivered to the appropriator or to the person making the change who [~~shall, within 30 days, cause the same to be recorded~~] may record the certificate in the office of the county recorder of the county in which the water is diverted from the natural stream or source.

(6) The certificate issued [~~and filed~~] under this section is prima facie evidence of the owner's right to [~~the use of~~] use the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights.

CHAPTER 129
S. B. 39
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

CHILDREN'S JUSTICE CENTER PROGRAM AMENDMENTS

Chief Sponsor: Ralph Okerlund
House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill adds two counties and replaces interlocal agreement requirements with a memorandum of understanding requirement.

Highlighted Provisions:

This bill:

- adds Sanpete and Sevier Counties to the list of counties in which Children's Justice Centers shall be established;
- replaces the current interlocal agreement requirement with a memorandum of understanding requirement to be executed by all parties involved;
- allows a licensed nurse practitioner to serve on a local Children's Justice Center Advisory Board; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-5b-101, as last amended by Laws of Utah 2005, Chapter 38
67-5b-102, as last amended by Laws of Utah 2005, Chapters 38 and 186
67-5b-103, as enacted by Laws of Utah 1994, Chapter 192
67-5b-105, as last amended by Laws of Utah 2009, Chapter 32

REPEALS AND REENACTS:

67-5b-104, as last amended by Laws of Utah 2005, Chapter 71

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

Section 1. Section 67-5b-101 is amended to read:

67-5b-101. Definitions.

As used in this part:

(1) "Abused child" means a child 17 years of age or younger who is a victim of:

(a) sexual abuse or physical abuse; or

(b) other crimes involving children where the child is a primary victim or a critical witness, such as in drug-related child endangerment cases.

[~~(2) "Agreement" means a written contract between two or more public agencies and other persons to provide for multidisciplinary intergovernmental operation of a center established in accordance with Section 67-5b-104.~~]

[~~(3)~~] (2) "Center" means a Children's Justice Center established in accordance with Section 67-5b-102.

[~~(4)~~] (3) "Officers and employees" means any person performing services for two or more public agencies as agreed in [~~intergovernmental contracts~~] memoranda of understanding in accordance with Section 67-5b-104.

[~~(5)~~] (4) "Public agency" means a municipality, a county, the attorney general, the Division of Child and Family Services, the Division of Juvenile Justice Services, the Department of Corrections, the juvenile court, and the Administrative Office of the Courts.

[~~(6)~~] (5) "Volunteer" means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency. Volunteer does not include any person participating in human subjects research and court-ordered compensatory service workers as defined in Section 67-20-2.

Section 2. Section 67-5b-102 is amended to read:

67-5b-102. Children's Justice Center -- Requirements of center -- Purposes of center.

(1) (a) There is established a program that provides a comprehensive, multidisciplinary, nonprofit, intergovernmental response to sexual abuse of children, physical abuse of children, and other crimes involving children where the child is a primary victim or a critical witness, such as in drug-related child endangerment cases, in a facility known as a Children's Justice Center.

(b) The attorney general shall administer the program.

(c) The attorney general shall:

(i) allocate the funds appropriated by a line item pursuant to Section 67-5b-103;

(ii) administer applications for state and federal grants;

(iii) staff the Advisory Board on Children's Justice;

(iv) assist in the development of new centers; and

(v) coordinate services between centers.

(2) (a) The attorney general shall establish Children's Justice Centers or satellite offices in Cache County, Carbon County, Davis County, Duchesne County, Emery County, Grand County, Iron County, Salt Lake County, Sanpete County, Sevier County, Tooele County, Uintah County, Utah County, Wasatch County, Washington County, and Weber County.

(b) The attorney general may establish other centers within a county and in other counties of the state.

(3) The attorney general and each center shall fulfill the statewide purpose of each center by:

(a) minimizing the time and duplication of effort required to investigate, prosecute, and initiate treatment for the abused child in the state;

(b) facilitating the investigation of the alleged offense against the abused child;

(c) conducting interviews of abused children and their families in a professional manner;

(d) obtaining reliable and admissible information which can be used effectively in criminal and child protection proceedings in the state;

(e) coordinating and tracking:

(i) the use of limited medical and psychiatric services;

(ii) investigation of the alleged offense;

(iii) preparation of prosecution;

(iv) treatment of the abused child and family; and

(v) education and training of persons who provide services to the abused child and its family in the state;

(f) expediting the processing of the case through the courts in the state;

(g) protecting the interest of the abused child and the community in the state;

(h) reducing trauma to the abused child in the state;

(i) enhancing the community understanding of sexual abuse of children, physical abuse of children, and other crimes in the state involving children where the child is a primary victim or a critical witness, such as in drug-related child endangerment cases;

(j) providing as many services as possible that are required for the thorough and effective investigation of child abuse cases; and

(k) enhancing the community understanding of criminal offenses committed against or in the presence of children.

(4) To assist a center in fulfilling the requirements and statewide purposes as provided in Subsection (3), each center may obtain access to any relevant juvenile court legal records and adult court legal records, unless sealed by the court.

(5) The statewide purpose of this chapter is to establish a program that provides a comprehensive, multidisciplinary, nonprofit, intergovernmental response to sexual abuse of children, physical abuse of children, and other crimes involving children where the child is a primary victim or a critical witness, such as drug-related child endangerment cases, in a facility known as a Children's Justice Center.

Section 3. Section 67-5b-103 is amended to read:

67-5b-103. Appropriation and funding.

(1) Funding for centers under this section is intended to be broad-based, provided by a line item appropriation by the Legislature to the attorney general, and is intended to include federal grant money, local government money, and private donations.

(2) The money appropriated shall be used to contract with [~~intergovernmental bodies that qualify under Section 67-5b-104 to provide a comprehensive, multidisciplinary, nonprofit, intergovernmental response to abused children~~] each public agency designated to oversee the operation and accountability of a center and to cover administrative costs of coordination of the centers' operations.

Section 4. Section 67-5b-104 is repealed and reenacted to read:

67-5b-104. Requirements of a memorandum of understanding.

(1) Before a center may be established, a memorandum of understanding regarding participation in operation of the center shall be executed among:

(a) the contracting public agency designated to oversee the operation and accountability of the center, including the budget, costs, personnel, and management pursuant to Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) the Office of the Attorney General;

(c) at least one representative of a county or municipal law enforcement agency that investigates child abuse in the area to be served by the center;

(d) the division of Child and Family Services;

(e) the county or district attorney who routinely prosecutes child abuse cases in the area to be served by the center; and

(f) at least one representative of any other governmental entity that participates in child abuse investigations or offers services to child abuse victims that desires to participate in the operation of the center.

(2) A memorandum of understanding executed under this section shall include the agreement of each participating entity to cooperate in:

(a) developing a comprehensive and cooperative multidisciplinary team approach to investigating child abuse;

(b) reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse to minimize the negative impact of the investigation on the child; and

(c) developing, maintaining, and supporting, through the center, an environment that emphasizes the best interests of children.

Section 5. Section 67-5b-105 is amended to read:

67-5b-105. Local advisory boards -- Membership.

(1) The cooperating public agencies and other persons shall make up each center's local advisory board, which shall be composed of the following people from the county or area:

(a) the local center director or the director's designee;

(b) a district attorney or county attorney having criminal jurisdiction or any designee;

(c) a representative of the attorney general's office, designated by the attorney general;

(d) a county sheriff or a chief of police or their designee;

(e) the county executive or the county executive's designee;

(f) a licensed nurse practitioner or physician [~~licensed to practice medicine and surgery under Section 58-67-301, Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act~~];

(g) a licensed mental health professional;

(h) a criminal defense attorney;

(i) at least four members of the community at large provided, however, that the state advisory board may authorize fewer members, although not less than two, if the local advisory board so requests;

(j) a guardian ad litem or representative of the Office of Guardian Ad Litem, designated by the director; and

(k) a representative of the Division of Child and Family Services within the Department of Human Services, designated by the employee of the division who has supervisory responsibility for the county served by the center.

(2) The members on each local advisory board who serve due to public office as provided in Subsections (1)(b) through (e) shall select the remaining members. The members on each local advisory board shall select a chair of the local advisory board.

(3) The local advisory board [~~shall~~] may not supersede the authority of the contracting public agency as designated in Section 67-5b-104.

(4) Appointees and designees shall serve a term or terms as designated in the bylaws of the local advisory board.

CHAPTER 130
S. B. 57
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

ANIMAL CONTROL - EXCEPTION FOR COMMUNITY CATS

Chief Sponsor: Dennis E. Stowell
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill creates an Animal Welfare chapter in Title 11, Cities, Counties, and Local Taxing Units.

Highlighted Provisions:

This bill:

- defines terms;
- defines a sponsor of a cat colony as a person who actively traps cats in a colony for the purpose of sterilizing, vaccinating, and ear-tipping before returning the cat to its original location;
- exempts community cats from the five-day mandatory hold requirement;
- allows a city or county to set up a permitting process for cat colonies and provide notice to adjacent property owners; and
- allows a shelter that receives a feral cat to release it to a sponsor that operates a community cat program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-24-1.5, as last amended by Laws of Utah 2005, Chapter 126

ENACTS:

11-46-101, Utah Code Annotated 1953
11-46-102, Utah Code Annotated 1953
11-46-103, Utah Code Annotated 1953
11-46-201, Utah Code Annotated 1953
11-46-301, Utah Code Annotated 1953
11-46-302, Utah Code Annotated 1953
11-46-303, Utah Code Annotated 1953
11-46-304, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

11-46-202, (Renumbered from 17-42-102, as last amended by Laws of Utah 2003, Chapter 292)
11-46-203, (Renumbered from 17-42-103, as last amended by Laws of Utah 2000, Chapter 217)
11-46-204, (Renumbered from 17-42-104, as last amended by Laws of Utah 2000, Chapter 217)
11-46-205, (Renumbered from 17-42-105, as last amended by Laws of Utah 2000, Chapter 217)
11-46-206, (Renumbered from 17-42-105.5, as enacted by Laws of Utah 2000, Chapter 217)
11-46-207, (Renumbered from 17-42-106, as enacted by Laws of Utah 1998, Chapter 156)
11-46-208, (Renumbered from 17-42-107, as enacted by Laws of Utah 1998, Chapter 156)

REPEALS:

10-8-64, as last amended by Laws of Utah 2009, Chapter 282
10-17-101, as enacted by Laws of Utah 1998, Chapter 156
10-17-102, as last amended by Laws of Utah 2003, Chapter 292
10-17-103, as last amended by Laws of Utah 2000, Chapter 217
10-17-104, as last amended by Laws of Utah 2000, Chapter 217
10-17-105, as last amended by Laws of Utah 2000, Chapter 217
10-17-105.5, as enacted by Laws of Utah 2000, Chapter 217
10-17-106, as enacted by Laws of Utah 1998, Chapter 156
10-17-107, as enacted by Laws of Utah 1998, Chapter 156
17-42-101, as enacted by Laws of Utah 1998, Chapter 156

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

Section 1. Section 11-46-101 is enacted to read:

CHAPTER 46. ANIMAL WELFARE ACT

Part 1. General Provisions

11-46-101. Title.

This chapter is known as the "Animal Welfare Act."

Section 2. Section 11-46-102 is enacted to read:

11-46-102. Definitions.

As used in this chapter:

(1) "Animal" means a cat or dog.

(2) "Animal control officer" means any person employed or appointed by a county or a municipality who is authorized to investigate violations of laws and ordinances concerning animals, to issue citations in accordance with Utah law, and take custody of animals as appropriate in the enforcement of the laws and ordinances.

(3) "Animal shelter" means a facility or program:

(a) providing services for stray, lost, or unwanted animals, including holding and placing the animals for adoption, but does not include an institution conducting research on animals, as defined in Section 26-26-1; or

(b) a private humane society or private animal welfare organization.

(4) "Person" means an individual, an entity, or a representative of an entity.

Section 3. Section 11-46-103 is enacted to read:

11-46-103. Stray animals.

(1) Each municipal or county animal control officer shall hold any unidentified or unclaimed stray animal in safe and humane custody for a minimum of five business days after the time of impound and prior to making any final disposition of the animal.

(2) A record of each animal held shall be maintained. The record shall include:

(a) date of impound;

(b) date of disposition; and

(c) method of disposition, which may be:

(i) placement in an adoptive home or other transfer of the animal, which shall be in compliance with Part 2, Animal Shelter Pet Sterilization Act;

(ii) return to its owner;

(iii) placement in a community cat program as defined in Section 11-46-302; or

(iv) euthanasia.

(3) An unidentified or unclaimed stray animal may be euthanized prior to the completion of the five working day minimum holding period to prevent unnecessary suffering due to serious injury or disease, if the euthanasia is in compliance with written agency or department policies and procedures, and with any local ordinances allowing the euthanasia.

(4) An unidentified or unclaimed stray animal shall be returned to its owner upon:

(a) proof of ownership;

(b) compliance with requirements of local animal control ordinances; and

(c) compliance with Part 2, Animal Shelter Pet Sterilization Act.

Section 4. Section 11-46-201 is enacted to read:

Part 2. Animal Shelter Pet Sterilization Act

11-46-201. Title.

This part is known as the "Animal Shelter Pet Sterilization Act."

Section 5. Section 11-46-202, which is renumbered from Section 17-42-102 is renumbered and amended to read:

[~~17-42-102~~]. 11-46-202. Definitions.

[~~As~~] In addition to the definitions in Section 11-46-102, as used in this [~~chapter~~] part:

[~~(1) "Animal" means a cat or dog.~~]

[~~(2) "Animal shelter" means a facility or program:~~]

[~~(a) providing services for stray, lost, or unwanted animals, including holding and placing the animals for adoption, but does not include an institution conducting research on animals, as defined in Section 26-26-1; and~~]

[~~(b) operated by:~~]

[~~(i) a first or second class county as defined in Section 17-50-501;~~]

[~~(ii) a city of the first, second, or third class;~~]

[~~(iii) a first or second class county operating the shelter jointly with any municipality; or~~]

[~~(iv) a private humane society or private animal welfare organization located within a first or second class county or within a city of the first, second, or third class.~~]

[~~(3) "Person" means an individual, an entity, or a representative of an entity.~~]

[~~(4)~~] (1) "Proof of sterilization" means a written document signed by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, stating:

(a) a specified animal has been sterilized;

(b) the date on which the sterilization was performed; and

(c) the location where the sterilization was performed.

[~~(5)~~] (2) "Recipient" means the person to whom an animal shelter transfers an animal for adoption.

[~~(6)~~] (3) "Sterilization deposit" means the portion of a fee charged by an animal shelter to a recipient or claimant of an unsterilized animal to ensure the animal is timely sterilized in accordance with an agreement between the recipient or the claimant and the animal shelter.

[~~(7)~~] (4) "Sterilized" means that an animal has been surgically altered either by the spaying of a female animal or by the neutering of a male animal, so it is unable to reproduce.

[~~(8)~~] (5) "Transfer" means that an animal shelter sells, gives away, places for adoption, or transfers an animal to a recipient.

Section 6. Section 11-46-203, which is renumbered from Section 17-42-103 is renumbered and amended to read:

[~~17-42-103~~]. 11-46-203. Animal shelters to transfer only sterilized animals, or shall require sterilization deposit.

(1) An animal shelter may not transfer an animal that has not been sterilized, except as provided in Subsection (2) or Section [~~17-42-105.5~~] 11-46-206.

(2) An animal shelter may transfer an animal for adoption that has not been sterilized only if the animal shelter:

(a) establishes a written agreement, executed by the recipient, stating the animal is not sterilized and the recipient agrees in writing to be responsible for ensuring the animal is sterilized:

(i) within 30 days after the agreement is signed, if the animal is six months of age or older; or

(ii) if the animal is younger than six months of age, within 30 days after the animal becomes six months of age; and

(b) receives from the recipient a sterilization deposit as provided under Section [~~17-42-104~~]

11-46-204, the terms of which are part of the written agreement executed by the recipient [~~under~~] in accordance with this section.

(3) The shelter may waive the sterilization deposit and release any unsterilized animal to a sponsor, as defined in Section 11-46-302, provided the sponsor is a non-profit organization that qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code and provides proof of sterilization within 30 days.

Section 7. Section 11-46-204, which is renumbered from Section 17-42-104 is renumbered and amended to read:

[~~17-42-104~~]. 11-46-204. Sterilization deposit.

(1) A sterilization deposit may be:

(a) a portion of the adoption fee or purchase price of the [~~pet~~] animal, which will enable the adopter to take the [~~pet~~] animal for sterilization to a veterinarian with whom the animal shelter has an agreement that the veterinarian will bill the animal shelter directly for the sterilization;

(b) a deposit that is:

(i) refundable to the recipient if proof of sterilization of the animal within the appropriate time limits under Section [~~17-42-103~~] 11-46-203 is presented to the animal shelter not more than three months after the date the animal is sterilized; and

(ii) forfeited to the animal shelter if proof of sterilization is not presented to the animal shelter in compliance with Subsection (1)(b)(i); or

(c) a deposit under Section [~~17-42-105.5~~] 11-46-206 required for an owner to claim an unsterilized animal impounded at the animal shelter.

(2) Sterilization deposits under Subsection (1) shall reflect the average reduced cost of a sterilization of an animal, based on the gender and weight of the animal, that is reasonably available in the area where the animal shelter is located, but the deposit may not be less than $25.

(3) If a female [~~dog or cat~~] animal and her litter are transferred to one person, a sterilization deposit is required only for the female [~~dog or cat~~] animal.

(4) All sterilization deposits forfeited or unclaimed under this section shall be retained by the animal shelter and [~~shall be~~] used by the animal shelter only for:

(a) a program to sterilize animals, which may include a sliding scale fee program;

(b) a public education program to reduce and prevent overpopulation of animals and the related costs to local governments;

(c) a follow-up program to assure that animals transferred by the animal shelter are sterilized in accordance with the agreement executed under Section [~~17-42-103~~] 11-46-203; and

(d) any additional costs incurred by the animal shelter in the administration of the requirements of this chapter.

Section 8. Section 11-46-205, which is renumbered from Section 17-42-105 is renumbered and amended to read:

[~~17-42-105~~]. 11-46-205. Failure to comply with sterilization agreement.

If a recipient fails to comply with the sterilization agreement under Subsection [~~17-42-103~~] 11-46-203(2):

(1) the failure is ground for seizure and impoundment of the animal by the animal shelter from whom the recipient obtained the animal;

(2) the recipient relinquishes all ownership rights regarding the animal and any claim to expenses incurred in maintenance and care of the animal; and

(3) the recipient forfeits the sterilization deposit.

Section 9. Section 11-46-206, which is renumbered from Section 17-42-105.5 is renumbered and amended to read:

[~~17-42-105.5~~]. 11-46-206. Sterilization deposit -- When required for redemption by owner of impounded animal.

(1) Upon the second impound within a 12-month period and upon any subsequent impound of an animal that is claimed by its owner, an animal shelter may release the impounded animal to its owner only upon payment of all impound fees required by the shelter and:

(a) receipt of proof the animal has been sterilized; or

(b) a sterilization deposit.

(2) The sterilization deposit shall be refunded to the owner only if the owner provides proof of sterilization to the animal shelter within 30 days of release of the animal to the owner.

Section 10. Section 11-46-207, which is renumbered from Section 17-42-106 is renumbered and amended to read:

[~~17-42-106~~]. 11-46-207. Penalties.

(1) (a) A person who knowingly commits any of the violations in Subsection (2) is subject to a civil penalty of not less than $250 on a first violation [~~of Subsection (2)~~], and a civil penalty of not less than $500 on any second or subsequent violation [~~of Subsection (2)~~].

(b) The administrator of the animal shelter imposes the civil penalties under this section.

(2) A person is subject to the civil penalties under Subsection (1) who:

(a) falsifies any proof of sterilization submitted for the purpose of compliance with this [~~chapter~~] part;

(b) provides to an animal shelter or a licensed veterinarian inaccurate information regarding

ownership of any animal required to be submitted for sterilization under this [~~chapter~~] part;

(c) submits to an animal shelter false information regarding sterilization fees or fee schedules; or

(d) issues a check for insufficient funds for any sterilization deposit required of the person under this [~~chapter~~] part.

(3) A person who contests a civil penalty imposed [~~against him~~] under this section is entitled to an administrative hearing that provides for the person's rights of due process.

(4) All penalties collected under this section shall be retained by the animal shelter imposing the penalties, to be used solely for the purposes [~~under~~] of Subsection [~~17-42-104~~] 11-46-204(4).

Section 11. Section 11-46-208, which is renumbered from Section 17-42-107 is renumbered and amended to read:

[~~17-42-107~~]. 11-46-208. Local ordinances may be no less restrictive.

Local ordinances or the adoption or placement procedures of any animal shelter shall be at least as restrictive as the provisions of this [~~chapter~~] part.

Section 12. Section 11-46-301 is enacted to read:

Part 3. Community Cat Act

11-46-301. Title.

This part is known as the "Community Cat Act."

Section 13. Section 11-46-302 is enacted to read:

11-46-302. Definitions.

In addition to the definitions in Sections 11-46-102 and 11-46-202, as used in this part:

(1) "Community cat" means a feral or free-roaming cat that is without visibly discernable or microchip owner identification of any kind, and has been sterilized, vaccinated, and ear-tipped.

(2) "Community cat caretaker" means any person other than an owner who provides food, water, or shelter to a community cat or community cat colony.

(3) "Community cat colony" means a group of cats that congregate together. Although not every cat in a colony may be a community cat, any cats owned by individuals that congregate with a colony are considered part of it.

(4) "Community cat program" means a program pursuant to which feral cats are sterilized, vaccinated against rabies, ear-tipped, and returned to the location where they congregate.

(5) "Ear-tipping" means removing approximately a quarter-inch off the tip of a cat's left ear while the cat is anesthetized for sterilization.

(6) "Feral" has the same meaning as in Section 23-13-2.

(7) "Sponsor" means any person or organization that traps feral cats, sterilizes, vaccinates against rabies, and ear-tips them before returning them to the location where they were trapped. A sponsor may be any animal humane society, non-profit organization, animal rescue, adoption organization, or a designated community cat caretaker that also maintains written records on community cats.

Section 14. Section 11-46-303 is enacted to read:

11-46-303. Community cats.

(1) A cat received by a shelter under the provisions of Section 11-46-103 may be released prior to the five-day holding period to a sponsor that operates a community cat program.

(2) A community cat is:

(a) exempt from licensing requirements and feeding bans; and

(b) eligible for release from an animal shelter prior to the mandatory five-day hold period in Section 11-46-103.

(3) Community cat sponsors or caretakers do not have custody, as defined in Section 76-9-301, of any cat in a community cat colony. Cats in a colony that are obviously owned, as evidenced by a collar, tags, microchip, or other discernable owner identification, are not exempt from the provisions of Title 76, Chapter 9, Part 3, Cruelty to Animals.

(4) Sterilization and vaccination records shall be maintained for a minimum of three years and be available to an animal control officer upon request.

Section 15. Section 11-46-304 is enacted to read:

11-46-304. Permit process for community cat colonies.

(1) A county or municipality may create a permitting process for community cat colonies.

(2) Any permitting process created by a county or municipality shall provide notice to adjacent property owners by:

(a) mailing notice to the record owner of each parcel within parameters specified by the permitting process; or

(b) posting notice on the property with a sign of sufficient size, durability, print quality, and location that is reasonably calculated to give notice to passers-by.

Section 16. Section 77-24-1.5 is amended to read:

77-24-1.5. Safekeeping by officer pending disposition -- Records required.

[~~(1)~~] Each peace officer shall:

[~~(a)~~] (1) hold all property in safe custody:

[~~(i)~~] (a) until it is received into evidence; or

[~~(ii)~~] (b) if it is not used as evidence, until it can be disposed of as provided in this chapter; and

[~~(b)~~] (2) maintain a proper record of the property that identifies:

[~~(i)~~] (a) the owner of the property, if known; and

[~~(ii)~~] (b) the case for which it was taken or received and is being held.

[~~(2) (a) Each municipal or county animal control officer shall hold any unidentified or unclaimed stray dog or stray cat in safe and humane custody for a minimum of three working days after the time of impound prior to making any final disposition of the animal, including:~~]

[~~(i) placement in an adoptive home or other transfer of the animal, which shall be in compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization Act, or Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act; or~~]

[~~(ii) euthanasia.~~]

[~~(b) An unidentified or unclaimed stray dog or stray cat may be euthanized prior to the completion of the three working day minimum holding period to prevent unnecessary suffering due to serious injury or disease, if the euthanasia is in compliance with written established agency or department policies and procedures, and with any local ordinances allowing the destruction.~~]

[~~(c) An unidentified or unclaimed stray dog or stray cat shall be returned to its owner upon:~~]

[~~(i) proof of ownership;~~]

[~~(ii) compliance with requirements of local animal control ordinances; and~~]

[~~(iii) compliance with Title 10, Chapter 17, Municipal Animal Shelter Pet Sterilization Act, or Title 17, Chapter 42, County Animal Shelter Pet Sterilization Act.~~]

Section 17. Repealer.

This bill repeals:

Section 10-8-64, Livestock at large -- Pound -- Distraint.

Section 10-17-101, Title.

Section 10-17-102, Definitions.

Section 10-17-103, Animal shelters shall transfer only sterilized animals, or shall require sterilization deposit.

Section 10-17-104, Sterilization deposit.

Section 10-17-105, Failure to comply with sterilization agreement.

Section 10-17-105.5, Sterilization deposit -- When required for redemption by owner of impounded animal.

Section 10-17-106, Penalties.

Section 10-17-107, Local ordinances may be no less restrictive.

Section 17-42-101, Title.

CHAPTER 131
S. B. 58
Passed February 24, 2011
Approved March 21, 2011
Effective May 10, 2011

CRIME VICTIMS REPARATIONS REVISIONS

Chief Sponsor: J. Stuart Adams
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies the Crime Victim Reparations Act to incorporate functions already being performed and renames the office.

Highlighted Provisions:

This bill:

- changes the name of the office to the Utah Office for Victims of Crime;
- modifies the existing membership of the board to include a victim advocate;
- expands the board duties to include approval or allocation of subgrantee awards and establishment of policies for the administration of the assistance program;
- defines the duties and functions of assistance officers; and
- amends restitution claims procedures.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-9-404, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
53-1-106, as last amended by Laws of Utah 2009, Chapter 183
53-6-213, as last amended by Laws of Utah 2008, Chapters 339 and 382
63A-9-801, as last amended by Laws of Utah 2008, Chapters 3 and 382
63M-7-501, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-502, as last amended by Laws of Utah 2010, Chapter 254
63M-7-503, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-504, as last amended by Laws of Utah 2010, Chapter 286
63M-7-505, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-506, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-507, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-508, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-514, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-515, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-516, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-525, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382
63M-7-601, as renumbered and amended by Laws of Utah 2008, Chapter 382
76-3-201, as last amended by Laws of Utah 2010, Chapter 85
76-5-503, as enacted by Laws of Utah 1993, Chapter 40
77-37-5, as last amended by Laws of Utah 2010, Chapter 82
77-38-3, as last amended by Laws of Utah 2008, Chapters 339 and 382
77-38a-202, as last amended by Laws of Utah 2009, Chapter 91
77-38a-404, as last amended by Laws of Utah 2008, Chapter 3
78B-9-405, as enacted by Laws of Utah 2008, Chapter 358

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

Section 1. Section 51-9-404 is amended to read:

51-9-404. Distribution of surcharge amounts.

(1) In this section:

(a) "Reparation fund" means the Crime Victim Reparations Fund.

(b) "Safety account" means the Public Safety Support Account.

(2) (a) There is created a restricted special revenue fund known as the "Crime Victim Reparations Fund" to be administered and distributed as provided in this part by the Utah Office for Victims of Crime [~~Victim Reparations~~] under Title 63M, Chapter 7, Part 5, Utah Office for Victims of Crime [~~Victim Reparations Act~~], in cooperation with the Division of Finance.

(b) Monies deposited in this fund are for victim reparations, criminal justice and substance abuse, other victim services, and, as appropriated, for administrative costs of the Commission on Criminal and Juvenile Justice under Title 63M, Chapter 7, Criminal Justice and Substance Abuse.

(3) (a) There is created a restricted account in the General Fund known as the "Public Safety Support Account" to be administered and distributed by the

Department of Public Safety in cooperation with the Division of Finance as provided in this part.

(b) Monies deposited in this account shall be appropriated to:

(i) the Division of Peace Officer Standards and Training (POST) as described in Title 53, Chapter 6, Peace Officer Standards and Training Act; and

(ii) the Office of the Attorney General for the support of the Utah Prosecution Council established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

(4) The Division of Finance shall allocate from the collected surcharge established in Section 51-9-401:

(a) 35% to the Crime Victim Reparations Fund;

(b) 18.5% to the safety account for POST, but not to exceed the amount appropriated by the Legislature; and

(c) 3% to the safety account for support of the Utah Prosecution Council, but not to exceed the amount appropriated by the Legislature.

(5) (a) In addition to the funding provided by other sections of this part, a percentage of the income earned by inmates working for correctional industries in a federally certified private sector/prison industries enhancement program shall be deposited in the Crime Victim Reparations Fund.

(b) The percentage of income deducted from inmate pay under Subsection (5)(a) shall be determined by the executive director of the Department of Corrections in accordance with the requirements of the private sector/prison industries enhancement program.

(6) (a) In addition to other monies collected from the surcharge, judges are encouraged to, and may in their discretion, impose additional reparations to be paid into the Crime Victim Reparations Fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by Title 76, Utah Criminal Code, for that offense.

Section 2. Section 53-1-106 is amended to read:

53-1-106. Department duties -- Powers.

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6a, Traffic Code, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6a-1406; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6a-1304;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking;

(d) meet with the Department of Technology Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations;

(e) provide assistance to the Crime Victim Reparations Board and the Utah Office for Victims of Crime [~~Victim Reparations~~] in conducting research or monitoring victims' programs, as required by Section 63M-7-505;

(f) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association;

(g) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63K-3-301;

(h) implement the provisions of Section 53-2-202, the Emergency Management Assistance Compact; and

(i) (i) maintain a database of the information listed below regarding each driver license or state identification card status check made by a law enforcement officer:

(A) the agency employing the law enforcement officer;

(B) the name of the law enforcement officer or the identifying number the agency has assigned to the law enforcement officer;

(C) the race and gender of the law enforcement officer;

(D) the purpose of the law enforcement officer's status check, including but not limited to a traffic stop or a pedestrian stop; and

(E) the race of the individual regarding whom the status check is made, based on the information provided through the application process under Section 53-3-205 or 53-3-804;

(ii) provide access to the database created in Subsection (1)(i)(i) to the Commission on Criminal and Juvenile Justice for the purpose of:

(A) evaluating the data;

(B) evaluating the effectiveness of the data collection process; and

(C) reporting and making recommendations to the Legislature; and

(iii) classify any personal identifying information of any individual, including law enforcement officers, in the database as protected records under Subsection 63G-2-305(9).

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63J-1-504.

(3) The department may establish or contract for the establishment of an Organ Procurement Donor Registry in accordance with Section 26-28-120.

Section 3. Section 53-6-213 is amended to read:

53-6-213. Appropriations from reparation fund.

(1) The Legislature shall appropriate from the fund established in Title 63M, Chapter 7, Part 5, Utah Office for Victims of Crime [~~Victim Reparations Act~~], to the division, funds for training of law enforcement officers in the state.

(2) The department shall make an annual report to the Legislature, which includes the amount received during the previous fiscal year.

Section 4. Section 63A-9-801 is amended to read:

63A-9-801. State surplus property program -- Definitions -- Administration.

(1) As used in this section:

(a) "Agency" means:

(i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage Control, Commerce, Community and Culture, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, Technology Services, and Transportation and the Labor Commission;

(ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah Office for Victims of Crime [~~Victim Reparations~~], Rehabilitation, and Treasurer;

(iii) the Public Service Commission and State Tax Commission;

(iv) the State Boards of Education, Pardons and Parole, and Regents;

(v) the Career Service Review [~~Board~~] Office;

(vi) other state agencies designated by the governor;

(vii) the legislative branch, the judicial branch, and the State Board of Regents; and

(viii) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-9-802.

(b) "Division" means the Division of Fleet Operations.

(c) "Information technology equipment" means any equipment that is designed to electronically manipulate, store, or transfer any form of data.

(d) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(e) "Judicial district" means the geographic districts established by Section 78A-1-102.

(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.

(ii) "Surplus property" does not mean real property.

(g) "Transfer" means transfer of surplus property without cash consideration.

(2) (a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Those rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling;

(viii) procedures governing the timing and location of public sales of inventory property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) The division shall report all transfers of information technology equipment by state agencies to public schools to the Utah Technology Commission and to the Legislative Interim Education Committee at the end of each fiscal year.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(c) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale

in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less an amount established by the division by rule to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this chapter by explicit reference to this chapter, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 5. Section 63M-7-501 is amended to read:

Part 5. Utah Office for Victims of Crime

63M-7-501. Title.

This part is known as the[~~"Crime Victim Reparations Act"~~] "Utah Office for Victims of Crime" and may be abbreviated as the[~~"CVRA."~~] "UOVC."

Section 6. Section 63M-7-502 is amended to read:

63M-7-502. Definitions.

As used in this chapter:

(1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.

(2) "Assistance officer" means the victim services program coordinator, grant analysts, and other staff employed by the office to perform the duties and functions provided in 63M-7-508.5.

[~~(2)~~] (3) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.

[~~(3)~~] (4) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

[~~(4)~~] (5) "Claim" means:

(a) the victim's application or request for a reparations award; and

(b) the formal action taken by a victim to apply for reparations pursuant to [~~Sections 63M-7-501 through 63M-7-525~~] this chapter.

[~~(5)~~] (6) "Claimant" means any of the following claiming reparations under this chapter:

(a) a victim;

(b) a dependent of a deceased victim;

(c) a representative other than a collateral source; or

(d) the person or representative who files a claim on behalf of a victim.

[~~(6)~~] (7) "Child" means an unemancipated person who is under 18 years of age.

[~~(7)~~] (8) "Collateral source" means the definition as provided in Section 63M-7-513.

[~~(8)~~] (9) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.

[~~(9)~~] (10) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(i) is or would be subject to prosecution in this state under Section 76-1-201;

(ii) occurs or is attempted;

(iii) causes, or poses a substantial threat of causing, bodily injury or death;

(iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and

(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

[~~(10)~~] (11) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after the victim's death.

[~~(11)~~] (12) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

[~~(12)~~] (13) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

[~~(13)~~] (14) "Director" means the director of the Utah Office for Victims of Crime [~~Victim Reparations~~].

[~~(14)~~] (15) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

[~~(15)~~] (16) "Economic loss" means economic detriment consisting only of allowable expense,

work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

[~~(16)~~] (17) "Elderly victim" means a person 60 years of age or older who is a victim.

[~~(17)~~] (18) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Section 63M-7-510.

[~~(18)~~] (19) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

[~~(19)~~] (20) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.

[~~(20)~~] (21) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

[~~(21)~~] (22) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(22)~~] (23) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(23)~~] (24) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

[~~(24)~~] (25) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.

[~~(25)~~] (26) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether the person is arrested, prosecuted, or convicted.

[~~(26)~~] (27) "Offense" means a violation of the criminal code.

[~~(27) "Office of Crime Victim Reparations" or "office" means the office of the reparations staff for the purpose of carrying out the provisions of this chapter.~~]

(28) "Perpetrator" means the person who actually participated in the criminally injurious conduct.

(29) "Reparations officer" means a person employed by the office to investigate claims of victims and award reparations under this chapter, and includes the director when the director is acting as a reparations officer.

[~~(30) "Reparations staff" means the director, the reparations officers, and any other staff employed to administer the Crime Victim Reparations Act.~~]

[~~(31)~~] (30) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of the injured person or the injured person's dependents if the injured person had not been injured.

[~~(32)~~] (31) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of a person but does not include service providers.

[~~(33)~~] (32) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

[~~(34)~~] (33) "Secondary victim" means a person who is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(35)~~] (34) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.

(35) "Utah Office for Victims of Crime" or "office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this chapter.

(36) (a) "Victim" means a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.

(c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

(37) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Section 7. Section 63M-7-503 is amended to read:

63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment of

claim for restitution judgment to Reparations Office.

(1) A reparations award may not supplant restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.

(2) The court may not reduce an order of restitution based on a reparations award.

(3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime [~~Victim Reparations~~] is assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of the assignment. The notice of assignment shall be signed by the victim and a reparations officer and shall [~~state the amount of the claim assigned.~~] contain an affidavit detailing the specific amounts of pecuniary damages paid on behalf of the victim. A copy of the notice of assignment and affidavit shall be mailed by certified mail to the defendant at his last known address 20 days prior to sentencing, entry of any judgment or order of restitution, or modification of any existing judgment or order of restitution. Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days of the receipt of notice, to be filed with the court and a copy mailed to the office. Upon the filing of the objection, the court shall allow the defendant a full hearing on the issue as provided by Subsection 77-38a-302(4).

(4) [~~Upon~~] If no objection is made or filed by the defendant, then upon conviction and sentencing [~~of the defendant~~], the court shall enter a [~~civil~~] judgment for complete restitution [~~as provided in Section 77-38a-401~~] pursuant to the provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.

(5) If the notice of assignment is filed after sentencing[~~, the court shall modify the civil judgment for restitution to~~] but during the term of probation or parole, the court or Board of Pardons shall modify any existing civil judgment and order of restitution to include expenses paid by the office on behalf of the victim and identify the office as the assignee of the assigned portion of the judgment and order of restitution. If no judgment or order of restitution has been entered, the court shall enter a judgment for complete restitution and court ordered restitution pursuant to the provisions of Sections 77-38a-302 and 77-38a-401.

Section 8. Section 63M-7-504 is amended to read:

63M-7-504. Crime Victim Reparations and Assistance Board -- Members.

(1) (a) A Crime Victim Reparations and Assistance Board is created, consisting of seven members appointed by the governor with the consent of the Senate.

(b) The membership of the board shall consist of:

(i) a member of the bar of this state;

(ii) a victim of criminally injurious conduct;

(iii) a licensed physician;

(iv) a representative of law enforcement;

(v) a mental health care provider; [~~and~~]

(vi) a victim advocate; and

[~~(vi)~~] (vii) [~~two other~~] a private [~~citizens~~] citizen.

(c) The governor may appoint a chair of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the chair's term. The board may elect a vice chair to serve in the absence of the chair.

(d) The board may hear appeals from administrative decisions as provided in rules adopted pursuant to Section 63M-7-515.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member may be reappointed to one successive term in addition to a member's initial full-term appointment.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) A member resigning from the board shall serve until the member's successor is appointed and qualified.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The board shall meet at least once quarterly but may meet more frequently as necessary.

Section 9. Section 63M-7-505 is amended to read:

63M-7-505. Board and office within Commission on Criminal and Juvenile Justice.

(1) The Crime Victim Reparations and Assistance Board and the Utah Office for Victims of Crime [~~Victim Reparations~~] are placed within the Commission on Criminal and Juvenile Justice for the provision by the commission of administrative and support services.

(2) The board or the director may request assistance from the Commission on Criminal and Juvenile Justice, the Department of Public Safety,

and other state agencies in conducting research or monitoring victims' programs.

Section 10. Section 63M-7-506 is amended to read:

63M-7-506. Functions of board.

(1) The Crime Victim Reparations and Assistance Board shall:

(a) adopt a description of the organization and prescribe the general operation of the board;

(b) prescribe policy for the Utah Office for Victims of Crime [~~Victim Reparations~~];

(c) adopt rules to implement and administer [~~Sections 63M-7-501 through 63M-7-525~~] this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;

(d) prescribe forms for applications for reparations;

(e) review all awards made by the reparations staff, although the board may not reverse or modify awards authorized by the reparations staff;

(f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;

(g) cooperate with the director and the director's staff in formulating standards for the uniform application of Section 63M-7-509, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States;

(h) allocate money available in the Crime Victim Reparations Fund to victims of criminally injurious conduct for reparations claims; [~~and~~]

(i) allocate money available to other victim services as provided by administrative rule once a sufficient reserve has been established for reparation claims[~~.~~]; and

(j) approve the allocation and disbursement of funds made available to the office by the United States, the state, foundations, corporations, or other entities or individuals to subgrantees from private, non-profit, and governmental entities operating qualified statewide assistance programs.

(2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, assistance officers, and other staff.

Section 11. Section 63M-7-507 is amended to read:

63M-7-507. Director -- Appointment and functions.

The executive director of the Commission on Criminal and Juvenile Justice, after consulting with the board, shall appoint a director to carry out the provisions of this chapter. The director shall be an experienced administrator with a background in at least one of the following fields: social work, psychology, criminal justice, law, or a related field. The director shall demonstrate an understanding of the needs of crime victims and of services to victims. The director shall devote the director's time and capacity to the director's duties. The director shall:

(1) hire staff, including reparations and assistance officers, as necessary;

(2) act when necessary as a reparations officer in deciding initial claims;

(3) possess the same investigation and decision-making authority as the reparations officers;

(4) hear appeals from the decisions of the reparations officers, unless the director acted as a reparations officer on the initial claim;

(5) serve as a liaison between the Utah Office for Victims of Crime [~~Victim Reparations~~] and the board;

(6) serve as the public relations representative of the office;

(7) provide for payment of all administrative salaries, fees, and expenses incurred by the staff of the board, to be paid out of appropriations from the fund;

(8) cooperate with the state treasurer and the state Division of Finance in causing the funds in the trust fund to be invested and its investments sold or exchanged and the proceeds and income collected;

(9) apply for, receive, allocate, disburse, and account for [~~grants of~~], subject to approval and in conformance with policies adopted by the board, all grant funds made available by the United States, the state, foundations, corporations, and other businesses, agencies, or individuals;

(10) obtain and utilize the services of other governmental agencies upon request; and

(11) act in any other capacity or perform any other acts necessary for the office or board to successfully fulfill its statutory duties and objectives.

Section 12. Section 63M-7-508 is amended to read:

63M-7-508. Reparations officers.

The reparations officers shall in addition to any assignments made by the director of the Utah Office for Victims of Crime [~~Victim Reparations~~]:

(1) hear and determine all matters relating to claims for reparations and reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;

(2) obtain from prosecuting attorneys, law enforcement officers, and other criminal justice agencies, investigations and data to enable the reparations officer to determine whether and to what extent a claimant qualifies for reparations;

(3) as determined necessary by the reparations officers, hold hearings, administer oaths or

affirmations, examine any person under oath or affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses, require the production of any books, papers, documents, or other evidence which may contribute to the reparations officer's ability to determine particular reparation awards;

(4) determine who is a victim or dependent;

(5) award reparations or other benefits determined to be due under this chapter and the rules of the board;

(6) take notice of judicially recognized facts and general, technical, and scientific facts within their specialized knowledge;

(7) advise and assist the board in developing policies recognizing the rights, needs, and interests of crime victims;

(8) render periodic reports as requested by the board concerning:

(a) the officers' activities; and

(b) the manner in which the rights, needs, and interests of crime victims are being addressed by the state's criminal justice system;

(9) establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships;

(10) cooperate with the Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and

(11) assist the director in publicizing the provisions of the [~~Crime Victim Reparations Act~~] Utah Office for Victims of Crime, including the procedures for obtaining reparation, and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this chapter and the procedure for applying for reparation.

Section 13. Section 63M-7-514 is amended to read:

63M-7-514. Notification of claimant -- Suspension of proceedings.

(1) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall immediately notify the claimant in writing of any award and shall forward to the Division of Finance a certified copy of the award and a warrant request for the amount of the award. The Division of Finance shall pay the claimant the amount submitted to the division, out of the fund. If monies in the fund are temporarily depleted, claimants approved to receive awards shall be placed on a waiting list and shall receive their awards as funds are available in the order in which their awards were approved.

(2) The reparations officer may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent.

Section 14. Section 63M-7-515 is amended to read:

63M-7-515. Rules for contested claims -- Exemption from Administrative Procedures Act.

(1) Rules for procedures for contested determinations by a reparations officer shall be adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) The Utah Office for Victims of Crime [~~Victim Reparations~~] is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

Section 15. Section 63M-7-516 is amended to read:

63M-7-516. Waiver of privilege.

(1) A victim filing a claim under the provisions of this chapter shall be considered to have waived any privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the victim except for the attorney-client privilege. The waiver shall apply only to reparations officers, the director [~~of reparations~~], the board, and legal counsel.

(2) The claimant may be required to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

(3) The reparations officer hearing a claim or an appeal from a claim shall make available to the claimant a copy of the report. If the victim is deceased, the director or the director's appointee, on request, shall furnish the claimant a copy of the report unless dissemination of that copy is prohibited by law.

Section 16. Section 63M-7-525 is amended to read:

63M-7-525. Purpose -- Not entitlement program.

(1) The purpose of the Utah Office for Victims of Crime [~~Victim Reparations~~] is to assist victims of criminally injurious conduct who may be eligible for assistance from the Crime Victim Reparations Fund. Reparation to a victim is limited to the money available in the fund.

(2) This program is not an entitlement program. Awards may be limited or denied as determined appropriate by the board. Failure to grant an award does not create a cause of action against the Utah Office for Victims of Crime [~~Victim Reparations~~], the state, or any of its subdivisions. There is no right to judicial review over the decision whether or not to grant an award.

(3) A cause of action based on a failure to give or receive the notice required by this chapter does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees. The failure does not affect or alter any requirement for filing or payment of a claim.

Section 17. Section 63M-7-601 is amended to read:

63M-7-601. Creation -- Members -- Chair.

(1) There is created within the governor's office the Utah Council on Victims of Crime.

(2) The Utah Council on Victims of Crime shall be composed of 24 voting members as follows:

(a) a representative of the Commission on Criminal and Juvenile Justice appointed by the executive director;

(b) a representative of the Department of Corrections appointed by the executive director;

(c) a representative of the Board of Pardons and Parole appointed by the chair;

(d) a representative of the Department of Public Safety appointed by the commissioner;

(e) a representative of the Division of Juvenile Justice Services appointed by the director;

(f) a representative of the Utah Office for Victims of Crime [~~Victim Reparations~~] appointed by the director;

(g) a representative of the Office of the Attorney General appointed by the attorney general;

(h) a representative of the United States Attorney for the district of Utah appointed by the United States Attorney;

(i) a professional or volunteer working in the area of violence against women and families appointed by the governor;

(j) the chair of each judicial district's victims' rights committee;

(k) the following members appointed to serve four-year terms:

(i) a representative of the Statewide Association of Public Attorneys appointed by that association;

(ii) a representative of the Utah Chiefs of Police Association appointed by the president of that association;

(iii) a representative of the Utah Sheriffs' Association appointed by the president of that association;

(iv) a representative of a Children's Justice Center appointed by the Advisory Board on Children's Justice; and

(v) a citizen representative appointed by the governor; and

(l) the following members appointed by the members in Subsections (2)(a) through (2)(k) to serve four-year terms:

(i) an individual who works professionally with victims of crime; and

(ii) a victim of crime.

(3) The council shall annually elect one member to serve as chair.

Section 18. Section 76-3-201 is amended to read:

76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e) (i) "Victim" means any person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(c) In addition to any other sentence the court may impose, the court, pursuant to the provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

(i) a civil judgment for complete restitution for the full amount of expenses paid on behalf of the victim by the Utah Office for Victims of Crime; and

(ii) an order of restitution for restitution payable to the Utah Office for Victims of Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

(d) In determining whether to order that the restitution required under Subsection (4)(c) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and provide findings of its decision on the record.

(5) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court, the defendant shall pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) $100 for up to 100 miles a defendant is transported;

(B) $200 for 100 up to 200 miles a defendant is transported; and

(C) $350 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

Section 19. Section 76-5-503 is amended to read:

76-5-503. Voluntary testing -- Victim to request -- Costs paid by Utah Office for Victims of Crime.

(1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5, Part 4, may request a test for the HIV infection.

(2) (a) The local health department shall obtain the blood specimen from the victim and forward the specimen to the Department of Health.

(b) The Department of Health shall analyze the specimen of the victim.

(3) The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense.

(4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if the victim provides a substantiated claim of the sexual offense, does not test HIV positive at the base-line testing phase, and complies with eligibility criteria established by the [~~Crime Victim Reparations Act~~] Utah Office for Victims of Crime.

Section 20. Section 77-37-5 is amended to read:

77-37-5. Remedies -- District Victims' Rights Committee.

(1) In each judicial district, the Utah Council on Victims of Crime, established in Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights committee consisting of:

(a) a county attorney or district attorney;

(b) a sheriff;

(c) a corrections field services administrator;

(d) an appointed victim advocate;

(e) a municipal attorney;

(f) a municipal chief of police; and

(g) other representatives as appropriate.

(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter 38a, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.

(3) If a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime.

(4) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.

(5) (a) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual.

(b) For all other violations, if the committee finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2).

(c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

(6) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Section 21. Section 77-38-3 is amended to read:

77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information.

(1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim has requested.

(4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has

requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received from a victim to the Board of Pardons and Parole.

(10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

(i) a law enforcement agency, including the prosecuting agency;

(ii) a victims' right committee as provided in Section 77-37-5;

(iii) a governmentally sponsored victim or witness program;

(iv) the Department of Corrections;

(v) the Utah Office for Victims of Crime [~~Victim Reparations~~];

(vi) the Commission on Criminal and Juvenile Justice; and

(vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

Section 22. Section 77-38a-202 is amended to read:

77-38a-202. Restitution determination -- Prosecution duties and responsibilities.

(1) At the time of entry of a conviction or entry of any plea disposition of a felony or class A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall provide to the district court:

(a) the names of all victims, including third parties, asserting claims for restitution;

(b) the actual or estimated amount of restitution determined at that time; and

(c) whether or not the defendant has agreed to pay the restitution specified as part of the plea disposition.

(2) In computing actual or estimated restitution, the attorney general, county attorney, municipal attorney, or district attorney shall:

(a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts; and

(b) in cases involving multiple victims, incorporate into any conviction or plea disposition all claims for restitution arising out of the investigation for which the defendant is charged.

(3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes shall also be provided to the court.

(4) (a) The attorney general, county attorney, municipal attorney, or district attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending distribution of the funds.

(b) In the event restitution funds are deposited in an interest bearing account as provided under

Subsection (4)(a), the attorney general, county attorney, municipal attorney, or district attorney shall:

(i) distribute any interest that accrues in the account to each crime victim on a pro rata basis; and

(ii) if all crime victims have been made whole and funds remain, distribute any remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of Crime [~~Victims Reparations~~].

(c) This section does not prevent an independent judicial authority from collecting, holding, and distributing restitution.

Section 23. Section 77-38a-404 is amended to read:

77-38a-404. Priority.

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60 days of receipt from the defendant by the court or department:

(a) provided the victim has complied with Subsection 77-38a-203(1)(b); and

(b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

(a) the crime victim;

(b) the Utah Office for Victims of Crime [~~Victim Reparations~~];

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;

(d) the person, entity, or governmental agency that has offered and paid a reward under Section 76-3-201.1 or 78A-6-117;

(e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department will be applied:

(a) first, to victim restitution, except the current and past due amount of $30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

Section 24. Section 78B-9-405 is amended to read:

78B-9-405. Judgment and assistance payment.

(1) (a) If a court finds a petitioner factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or under this part, and if the petitioner has served a period of incarceration, the court shall order that, as provided in Subsection (2), the petitioner shall receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah, as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison.

(b) As used in this Subsection (1), "petitioner" means a United States citizen or an individual who was otherwise lawfully present in this country at the time of the incident that gave rise to the underlying conviction.

(2) Payments pursuant to this section shall be made as follows:

(a) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall pay from the Crime Victim Reparations Fund to the petitioner within 45 days of the court order under Subsection (1) an initial sum equal to either 20% of the total financial assistance payment as determined under Subsection (1) or an amount equal to two years of incarceration, whichever is greater, but not to exceed the total amount owed.

(b) The Legislature shall appropriate as nonlapsing funds from the General Fund, and no later than the next general session following the issuance of the court order under Subsection (1):

(i) to the Crime Victim Reparations Fund, the amount that was paid out of the fund under Subsection (2)(a); and

(ii) to the Commission on Criminal and Juvenile Justice, as a separate line item, the amount ordered by the court for payments under Subsection (1), minus the amount reimbursed to the Crime Victim Reparations Fund under Subsection (2)(b)(i).

(c) Payments to the petitioner under this section, other than the payment under Subsection (2)(a), shall be made by the Commission on Criminal and Juvenile Justice quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(d) Payments under Subsection (2)(c) shall:

(i) commence no later than one year after the effective date of the appropriation for the payments;

(ii) be made to the petitioner for the balance of the amount ordered by the court after the initial payment under Subsection (2)(a); and

(iii) be allocated so that the entire amount due to the petitioner under this section has been paid no later than 10 years after the effective date of the appropriation made under Subsection (2)(b).

(3) (a) Payments pursuant to this section shall be reduced to the extent that the period of incarceration for which the petitioner seeks payment was attributable to a separate and lawful conviction.

(b) (i) Payments pursuant to this section shall be tolled upon the commencement of any period of incarceration due to the petitioner's subsequent conviction of a felony and shall resume upon the conclusion of that period of incarceration.

(ii) As used in this section, "felony" means a criminal offense classified as a felony under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed in Utah.

(c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part.

(4) (a) A person is ineligible for any payments under this part if the person was already serving a prison sentence in another jurisdiction at the time of the conviction of the crime for which that person has been found factually innocent pursuant to Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part, and that person is to be returned to that other jurisdiction upon release for further incarceration on the prior conviction.

(b) Ineligibility for any payments pursuant to this Subsection (4) shall be determined by the same court that finds a person to be factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part.

(5) Payments pursuant to this section:

(a) are not subject to any Utah state taxes; and

(b) may not be offset by any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or provide medical services for the petitioner.

(6) If a court finds a petitioner to be factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part, the court shall also:

(a) issue an order of expungement of the petitioner's criminal record for all acts in the charging document upon which the payment under this part is based; and

(b) provide a letter to the petitioner explaining that the petitioner's conviction has been vacated on the grounds of factual innocence and indicating that the petitioner did not commit the crime or crimes for which the petitioner was convicted and was later found to be factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part.

(7) A petitioner found to be factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this part shall have access to the same services and programs available to Utah citizens generally as though the conviction for which the petitioner was found to be factually innocent had never occurred.

(8) Payments pursuant to this part constitute a full and conclusive resolution of the petitioner's claims on the specific issue of factual innocence.

CHAPTER 132
S. B. 67
Passed March 8, 2011
Approved March 21, 2011
Effective May 10, 2011

ANNUAL EYE EXAMINATION FOR CHILDREN IN GRADES KINDERGARTEN THROUGH THREE

Chief Sponsor: Luz Robles
House Sponsor: Rebecca P. Edwards

LONG TITLE

General Description:

This bill amends the health examinations required in public schools.

Highlighted Provisions:

This bill:

- extends the public school vision screening from age seven to age eight;
- requires a public school that performs vision screening to develop a process to notify a parent or guardian if a child fails the vision screening or needs follow-up care; and
- provides limited immunity to volunteer vision screeners who are trained or supervised by the State Office of Education;

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-11-203, as last amended by Laws of Utah 2010, Chapter 273

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

Section 1. Section 53A-11-203 is amended to read:

53A-11-203. Vision screening.

(1) As used in this section, "division" means the Division of Services for the Blind and Visually Impaired, State Office of Education.

[~~(1)~~] (2) A child under [~~seven~~] eight years of age entering school for the first time in this state must present the following to the school:

(a) a certificate signed by a licensed physician, optometrist, or other licensed health professional approved by the division, stating that the child has received vision screening to determine the presence of amblyopia or other visual defects[~~. As used in this section, "division" means the Division of Services for the Blind and Visually Impaired, State Office of Education~~]; or

(b) a written statement signed by at least one parent or legal guardian of the child that the screening violates the personal beliefs of the parent or legal guardian.

[~~(2)~~] (3) (a) The division:

(i) shall provide vision screening report forms to a person approved by the division to conduct a free vision screening for children aged 3-1/2 to [~~seven~~] eight; and

(ii) may work with health care professionals, teachers, and vision screeners to develop protocols that may be used by a parent, teacher, or vision screener to help identify a child who may have conditions that are not detected in a vision screening, such as problems with eye focusing, eye tracking, visual perceptual skills, visual motor integration, and convergence insufficiency; and

(iii) shall, once protocols are established under Subsection (3)(a)(ii), develop language regarding the vision problems identified in Subsection (3)(a)(ii) to be included in the notice required by Subsection (3)(b).

(b) The report forms shall include the following information for a parent or guardian: "vision screening is not a substitute for a complete eye exam and vision evaluation by an eye doctor."

[~~(3)~~] (4) A school district may conduct free vision screening clinics for children aged 3-1/2 to [~~seven~~] eight.

[~~(4)~~] (5) (a) The division shall maintain a central register of children, aged 3-1/2 to [~~seven~~] eight, who fail vision screening and who are referred for follow-up treatment.

(b) The register described in Subsection [~~(4)~~] (5)(a) shall include the name of the child, age or birthdate, address, cause for referral, and follow-up results.

(c) A school district shall report referral follow-up results for children aged 3-1/2 to [~~seven~~] eight to the division.

[~~(5)~~] (6) (a) The division shall coordinate and supervise the training of a person who serves as a vision screener for a free vision screening clinic for children aged 3-1/2 to [~~seven~~] eight.

(b) A volunteer vision screener providing services under Subsection (6)(a) is not liable for any civil damages as a result of acts or omissions related to the vision screening unless the acts or omissions were willful or grossly negligent.

[~~(6)~~] (7) (a) Except as provided in Subsection [~~(6)~~] (7)(b), a licensed health professional providing vision care to private patients may not participate as a screener in a free vision screening program provided by a school district.

(b) A school district may:

(i) allow a licensed health professional who provides vision care to private patients to participate as a screener in a free vision screening program for a child [~~eight~~] nine years of age or older;

(ii) establish guidelines to administer a free vision screening program described in Subsection [~~(6)~~] (7)(b)(i); and

(iii) establish penalties for a violation of the requirements of Subsection [~~(6)~~] (7)(c).

(c) A licensed health professional or other person who participates as a screener in a free vision screening program described in Subsection [~~(6)~~] (7)(b):

(i) may not market, advertise, or promote the licensed health professional's business in connection with providing the free screening at the school; and

(ii) shall provide the child's results of the free vision screening on a form produced by the school or school district, which:

(A) may not include contact information other than the name of the licensed health professional[~~.~~]; and

(B) shall include a statement: "vision screening is not a substitute for a complete eye exam and vision evaluation by an eye doctor."

(d) A school district may provide information to a parent or guardian of the availability of follow up vision services for a student.

[~~(7)~~] (8) The Department of Health shall[~~,~~]:

(a) by rule, set standards and procedures for vision screening required by this chapter[~~, and shall~~], which shall include a process for notifying the parent or guardian of a child who fails a vision screening or is identified as needing follow-up care; and

(b) provide the division with copies of rules, standards, instructions, and test charts necessary for conducting vision screening.

[~~(8)~~] (9) The division shall supervise screening, referral, and follow-up required by this chapter.

CHAPTER 133
S. B. 68
Passed March 8, 2011
Approved March 21, 2011
Effective May 10, 2011

SOLID WASTE AMENDMENTS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Bill Wright

LONG TITLE

General Description:

This bill provides that if a person obtains approval to build a commercial nonhazardous solid waste disposal facility that requires approval by the Legislature and the governor, the approved facility shall be operational within five years of the governor's approval, or approval to build the facility is revoked.

Highlighted Provisions:

This bill:

- provides that if a person obtains each approval required to build a commercial nonhazardous solid waste disposal facility for a facility that requires approval by the Legislature and the governor, the approvals will be revoked unless the approved facility is operational:
  - within five years after the day on which the governor's approval is received, if the person receives the governor's approval on or after May 10, 2011; or
  - on or before May 10, 2016, if the person receives all required approvals before May 10, 2011;
- clarifies the approval process required to build certain commercial nonhazardous or hazardous waste facilities;
- provides that a person that has received each approval to build a commercial nonhazardous solid waste disposal facility that requires approval by the Legislature and the governor, may not transfer the approvals, including the approved operation plan, to another person within five years after the day on which the governor's approval is received; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-108, as last amended by Laws of Utah 2007, Chapter 72

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

Section 1. Section 19-6-108 is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; [~~or~~]

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990[~~.~~]; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the executive secretary for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the executive secretary information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The executive secretary may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the executive secretary for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct [~~any~~] a facility listed under Subsection (3)(c)(ii) until [~~he~~] the person receives[~~, in addition to and subsequent to~~]:

(A) local government approval and [~~subsequent to~~] the approval [~~required~~] described in Subsection (3)(a)[~~,~~];

(B) approval from the Legislature; and

(C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B), approval [~~by~~] from the governor [~~and the Legislature~~].

(ii) [~~Facilities~~] A facility referred to in Subsection (3)(c)(i) [~~are~~] is:

(A) a commercial nonhazardous solid [~~or hazardous~~] waste [~~treatment or~~] disposal [~~facilities~~] facility; [~~and~~]

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes[~~.~~]; or

(C) a commercial hazardous waste treatment, storage, or disposal facility.

(iii) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

(A) the governor's approval is received on or after May 10, 2011, and the facility is not operational within five years after the day on which the governor's approval is received; or

(B) the governor's approval is received before May 10, 2011, and the facility is not operational on or before May 10, 2016.

(iv) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to another person for five years after the day on which the governor's approval is received.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The executive secretary shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that he cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The executive secretary shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The executive secretary shall review each proposed nonhazardous solid or hazardous waste

operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the executive secretary shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness.

(ii) If the plan is determined by the executive secretary to be incomplete, he shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The executive secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the executive secretary determines that the proposed plan, or any part of it, will not comply with applicable rules, the executive secretary shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the board determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the executive secretary determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the executive secretary considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the executive secretary determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The executive secretary shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state shall not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the executive secretary.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

CHAPTER 134
S. B. 89
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

HOMEOWNER ASSOCIATION RESERVE ACCOUNT

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies provisions of the Condominium Ownership Act and the Community Association Act relating to reserve accounts.

Highlighted Provisions:

This bill:

- requires condominium and community associations to allow owners annually to decide whether and, if so, how to fund a reserve fund; and
- specifies the applicability of reserve fund provisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-7.5, as enacted by Laws of Utah 2010, Chapter 46
57-8a-211, as enacted by Laws of Utah 2010, Chapter 46

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

Section 1. Section 57-8-7.5 is amended to read:

57-8-7.5. Reserve analysis -- Reserve fund.

(1) As used in this section, "reserve analysis" means an analysis to determine:

(a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and

(b) the appropriate amount of any reserve fund.

(2) Except as otherwise provided in the declaration, a management committee shall:

(a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every five years; and

(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and

(b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every two years.

(3) The management committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the management committee, to conduct the reserve analysis.

(4) (a) A management committee may not use money in a reserve fund:

(i) for daily maintenance expenses, unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose; or

(ii) for any purpose other than the purpose for which the reserve fund was established.

(b) A management committee shall maintain a reserve fund separate from other funds of the association of unit owners.

(c) This Subsection (4) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

(5) Subsections (2), (3), [~~and~~] (4), and (6) do not apply to an association of unit owners during the period of declarant management.

(6) An association of unit owners shall:

(a) annually, at the annual meeting of unit owners or at a special meeting of unit owners:

(i) present the reserve study; and

(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount;

(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and indicate in the minutes any decision relating to funding a reserve fund.

(7) This section applies to each association of unit owners, regardless of when the association of unit owners was created.

Section 2. Section 57-8a-211 is amended to read:

57-8a-211. Reserve analysis -- Reserve fund.

(1) As used in this section, "reserve analysis" means an analysis to determine:

(a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the association's general budget or from other association funds; and

(b) the appropriate amount of any reserve fund.

(2) Except as otherwise provided in the governing documents, a board shall:

(a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every five years; and

(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and

(b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every two years.

(3) The board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the board, to conduct the reserve analysis.

(4) (a) A board may not use money in a reserve fund:

(i) for daily maintenance expenses, unless a majority of association members vote to approve the use of reserve fund money for that purpose; or

(ii) for any purpose other than the purpose for which the reserve fund was established.

(b) A board shall maintain a reserve fund separate from other association funds.

(c) This Subsection (4) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.

(5) Subsections (2), (3), [~~and~~] (4), and (6) do not apply to an association during the period of administrative control.

(6) An association shall:

(a) annually, at the annual meeting of lot owners or at a special meeting of lot owners:

(i) present the reserve study; and

(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount;

(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and indicate in the minutes any decision relating to funding a reserve fund.

(7) This section applies to each association, regardless of when the association was created.

CHAPTER 135
S. B. 94
Passed February 9, 2011
Approved March 21, 2011
Effective May 10, 2011

REQUIREMENTS FOR CONSTABLES

Chief Sponsor: Karen Mayne
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill requires that a constable prominently display a badge or other visible form of credentials and identification.

Highlighted Provisions:

This bill:

- requires that a constable prominently display a badge or other visible form of credentials and identification.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
17-25-6, Utah Code Annotated 1953

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

Section 1. Section 17-25-6 is enacted to read:

17-25-6. Identification of constables.

While performing a duty described in Section 17-25-1, a constable shall prominently display a badge or other visible form of credentials and identification identifying:

(1) a person as a constable;

(2) the person's name; and

(3) the county or municipality for which the constable is employed.

CHAPTER 136
S. B. 108
Passed March 2, 2011
Approved March 21, 2011
Effective May 10, 2011

JOINT USE OF A CANAL OR DITCH

Chief Sponsor: Dennis E. Stowell
House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill requires a person to negotiate in good faith to form a written contract before the use or enlargement of another person's canal or ditch to convey water.

Highlighted Provisions:

This bill:

- requires a person to negotiate in good faith to form a written contract before the use or enlargement of another person's canal or ditch to convey water;
- prohibits a person seeking to use or enlarge another person's canal or ditch from relying on the right-of-way provisions of Section 73-1-6 unless the person has, after negotiating in good faith, failed to enter into a written contract;
- describes certain obligations of a person using another person's canal or ditch unless otherwise agreed to by written contract; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-7, Utah Code Annotated 1953

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

Section 1. Section 73-1-7 is amended to read:

73-1-7. Enlargement for joint use of ditch.

(1) When [~~any~~] a person with no existing shareholder or contractual rights in the canal or ditch described in this Subsection (1) desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, [~~such~~] the person [~~shall have the right to~~] may use or enlarge [~~such~~] the canal or ditch already constructed[~~, by compensating~~] if:

(a) the canal or ditch can be:

(i) used without displacing current users or exceeding free board capacity; or

(ii) enlarged to convey the required quantity of water necessary to deliver all water authorized for delivery to authorized users of the canal or ditch, provide adequate free board capacity, and carry the additional quantity of water requested by the person;

(b) the person compensates:

(i) the owner of the canal or ditch to be used or enlarged for the damage caused by [~~such~~] the use or enlargement[~~, and by paying~~]; and

(ii) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement;

(c) the person pays an equitable proportion of the maintenance and operation of the canal or ditch jointly used or enlarged[~~; provided, that such~~]; and

(d) the person complies with Subsections (2) through (4).

(2) An enlargement made in accordance with Subsection (1) shall be made between [~~the 1st day of October and the 1st day of March, or at any other~~] October 1 and March 1, unless another time [~~that may be~~] is agreed [~~upon~~] to with:

(a) the owner of [~~such~~] the canal or ditch[~~.~~]; and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(3) The additional water turned in to the canal or ditch shall bear its proportion of loss by evaporation and seepage.

(4) Before use or enlargement is allowed in accordance with this section, the person seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written contract governing the relationship, including terms of use and payment, between the person and the following:

(a) the canal or ditch owner; and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(5) A person seeking to use or enlarge a canal or ditch in accordance with this section may not rely on the right-of-way provisions of Section 73-1-6 against:

(a) an owner of the canal or ditch unless the person has:

(i) attempted in good faith to enter into a written contract pursuant to Subsection 4(a); and

(ii) failed to enter into a written contract; and

(b) a landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement unless the person has:

(i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(b); and

(ii) failed to enter into a written contract.

(6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a person using an existing canal or ditch under this section:

(a) does not acquire any voting rights in the entity owning the canal or ditch not already possessed by a person;

(b) does not acquire any rights to direct the operation of the canal or ditch;

(c) may not add water to the canal or ditch that impairs the water quality in the canal or ditch, or increases the cost of any treatment, to a degree that adversely impacts the intended use of the water already in the canal or ditch;

(d) may not add water to the canal or ditch that exceeds the capacity of the canal or ditch, including free board capacity;

(e) may not modify any water rights without state engineer approval;

(f) shall pay an equitable proportion of construction or upgrade costs, including any related debt service, incurred by the owner of the canal or ditch within five years before the day on which the person begins use of the existing canal or ditch;

(g) is liable for an equitable proportion of any liability arising out of the operation or maintenance of the canal or ditch unless the event giving rise to the liability was caused solely by the person or by the owner of the canal or ditch;

(h) is solely liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the person; and

(i) is not liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the owner of the canal or ditch.

(7) This section is not applicable to any type of water conveyance infrastructure other than a canal or ditch described in this section.

(8) Nothing in this section will eliminate a criminal penalty resulting from conduct prohibited by Section 73-1-15.

CHAPTER 137
S. B. 117
Passed February 24, 2011
Approved March 21, 2011
Effective May 10, 2011

COMMUNITY ASSOCIATION ACT AMENDMENTS

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies the Community Association Act.

Highlighted Provisions:

This bill:

- modifies a provision prohibiting a homeowner association's governing documents from requiring an amendment to be approved by more than 67% of the voting interests; and
- prohibits the vote required to amend governing documents to exceed 67%, regardless of a contrary provision in the governing documents.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8a-104, as enacted by Laws of Utah 2007, Chapter 223

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

Section 1. Section 57-8a-104 is amended to read:

57-8a-104. Limitation on requirements for amending governing documents -- Limitation on contracts.

(1) As used in this section, "period of administrative control" means the period during which the person who filed the association's governing documents or a successor in interest retains authority to:

(a) appoint or remove members of the association's board of directors; or

(b) exercise power or authority assigned to the association under its governing documents.

[~~(2) (a) When the period of administrative control ends, the governing~~]

(2) (a) (i) Governing documents may not require that an amendment to the governing documents adopted after the period of administrative control be approved by more than 67% of the voting interests.

(ii) The vote required to adopt an amendment to governing documents may not be greater than 67% of the voting interests, notwithstanding a provision of the governing documents requiring a greater percentage and regardless of whether the governing documents were adopted before, on, or after May 10, 2011.

(b) Subsection (2)(a) does not apply to an amendment affecting only:

(i) lot boundaries; or

(ii) members' voting rights.

(3) (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association during a period of administrative control is binding beyond the period of administrative control unless terminated by the board of directors after the period of administrative control ends.

(b) Subsection (3)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.

(4) Voting interests under Subsections (2) and (3) are calculated in the manner required by the governing documents.

(5) Nothing in this section affects any other rights reserved by the person who filed the association's original governing documents or a successor in interest.

CHAPTER 138
S. B. 127
Passed March 8, 2011
Approved March 21, 2011
Effective May 10, 2011

POST RETIREMENT EMPLOYMENT AMENDMENTS

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions related to a retiree who returns to work for a participating employer.

Highlighted Provisions:

This bill:

- allows a retiree who begins reemployment with a participating employer on or after July 1, 2010, to be reemployed within one year if:
  - the retiree does not receive any employer paid benefits; and
  - the retiree does not earn more than a certain amount for any calendar year;
- recalculates the one-year separation requirement if a retiree is reemployed within one year; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-505, as enacted by Laws of Utah 2010, Chapter 264
67-5-8, as last amended by Laws of Utah 2007, Chapter 166

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

Section 1. Section 49-11-505 is amended to read:

49-11-505. Reemployment of a retiree -- Restrictions.

(1) For purposes of this section, "retiree":

(a) means a person who:

(i) retired from a participating employer; and

(ii) begins reemployment on or after July 1, 2010 with a participating employer; and

(b) does not include a retiree who is reemployed as an active senior judge appointed to hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

(2) A retiree may not for the same period of reemployment:

(a) (i) earn additional service credit; or

(ii) receive any retirement related contribution from a participating employer; and

(b) receive a retirement allowance.

(3) (a) [~~The~~] Except as provided under Subsection (3)(b), the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.

(b) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:

(i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

(ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree does not receive any employer provided benefits, including:

(A) medical benefits;

(B) dental benefits;

(C) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act and withholdings required by federal or state law for Social Security, Medicare, and unemployment insurance; or

(D) paid time off, including sick, annual, or other type of leave; and

(iii) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of:

(A) $15,000; or

(B) one-half of the retiree's final average salary upon which the retiree's retirement allowance is based.

(c) Beginning January 1, 2013, the board shall adjust the amount under Subsection (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(d) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitations under Subsection (3)(b))(iii).

(e) If a retiree is reemployed under the provisions of (3)(b), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection (3)(a).

(4) If a reemployed retiree is not subject to Subsection (3), the retiree may elect to:

(a) earn additional service credit in accordance with this title and cancel the retiree's retirement allowance; or

(b) continue to receive the retiree's retirement allowance and forfeit any retirement related

contribution from the participating employer who reemployed the retiree.

(5) If [~~an employee~~] a retiree makes an election under Subsection (4)(b) to continue to receive a retirement allowance while reemployed, the participating employer shall contribute to the office the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree.

(6) (a) A participating employer shall immediately notify the office:

(i) if the participating employer reemploys a retiree;

(ii) whether the remployment is subject to Subsection (3) or (4) of this section; and

(iii) any election by the retiree under Subsection (4).

(b) A participating employer is liable to the office for a payment or failure to make a payment in violation of this section.

(c) If a participating employer fails to notify the office in accordance with this section, the participating employer is immediately subject to a compliance audit by the office.

(7) (a) The office shall immediately cancel the retirement allowance of a retiree in accordance with Subsection (7)(b) if the office receives notice or learns of:

(i) the reemployment of a retiree [~~subject to~~] in violation of Subsection (3); or

(ii) the election of a reemployed retiree under Subsection (4)(a).

(b) The office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the retiree to active member status on the first day of the month following the date of:

(i) reemployment if the retiree is subject to Subsection (3); or

(ii) an election by an employee under Subsection (4)(a).

(8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date of reemployment:

(i) is not entitled to a recalculated retirement benefit; and

(ii) will resume the allowance that was being paid at the time of cancellation.

(b) Subject to Subsection (2), a retiree who is re-instated to active membership under Subsection (7) and who retires two or more years after the date of re-instatement to active membership shall:

(i) resume receiving the allowance that was being paid at the time of cancellation; and

(ii) receive an additional allowance based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

(9) (a) A retiree subject to this section shall report to the office the status of the reemployment under Subsection (3) or (4).

(b) If the retiree fails to inform the office of an election under Subsection (9)(a), the office shall withhold one month's benefit for each month the retiree fails to inform the office under Subsection (9)(a).

(10) The board may make rules to implement this section.

Section 2. Section 67-5-8 is amended to read:

67-5-8. Eligibility for career service status.

(1) (a) The attorney general has sole authority to determine who may be employed with the Office of the Attorney General.

(b) An employee of the state or any of its departments or agencies has no claim or right to a position in the attorney general's office by virtue of that employment.

(2) (a) An employee of the Office of the Attorney General shall be placed in a career service status if:

(i) for an employee who is an attorney, the attorney is a member in good standing of the Utah State Bar Association; and

(ii) except as provided in Subsection (3), the employee has been employed by the Office of the Attorney General as a probationary employee for a period of:

(A) at least one year but no more than 18 months; or

(B) in the case of investigators, at least 18 months, but no more than two years.

(b) An employee now employed by the attorney general's office in career service may not be terminated under this chapter except for cause.

(3) (a) The attorney general shall determine whether an employee should be granted career service status.

(b) If, at the end of the probationary period established under Subsection (2), the attorney general determines that an employee should be granted career service status, the attorney general shall notify the employee in writing of that decision and place a copy of the notification in the employee's personnel file.

(c) If the attorney general determines that career service status should not be granted, the attorney general may either terminate the employee or extend the probationary period for a period not to exceed one year.

(d) The attorney general shall notify the employee in writing of that decision and place a copy of the notification in the employee's personnel file.

(e) An employee terminated under this section has no appeal rights under this chapter.

(4) (a) An attorney in career service status under this chapter shall retire upon attaining the age of 70 years.

(b) Subject to the provisions of [~~Section~~] Sections 49-11-504 and 49-11-505, an attorney required to retire under this section may be employed by the attorney general, after retirement, as a special assistant attorney general.

(c) An attorney employed in the capacity of a special assistant under Subsection (4)(b) is not in career service status and is subject to termination in accordance with Section 67-5-12.

CHAPTER 139
S. B. 134
Passed March 2, 2011
Approved March 21, 2011
Effective May 10, 2011

TRANSPARENCY IN HEALTH CARE PROVIDER ADVERTISING

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends health care provider licensing laws to require certain information about the health care provider in any professional advertising.

Highlighted Provisions:

This bill:

- requires a health care provider to include certain information about the license and title of the health care provider in any advertisement for the health care provider's services;
- defines advertisement; and
- makes it unprofessional conduct to violate the advertisement requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

58-1-501.6, Utah Code Annotated 1953

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

Section 1. Section 58-1-501.6 is enacted to read:

58-1-501.6. Health care provider advertisements and disclosure -- Unprofessional conduct.

For purposes of this section:

(1) (a) "Advertisement" includes:

(i) billboards;

(ii) written documents such as:

(A) brochures;

(B) pamphlets;

(C) direct mail solicitations;

(D) radio, television, and telephone solicitation scripts; and

(E) telephone directories;

(iii) media, including television, radio, and Internet websites; and

(iv) any other means of promotion intended to directly or indirectly induce a person to enter into an agreement for services with a health care provider.

(b) "Advertisement" does not include materials that provide information about health care provider networks established by health insurance carriers.

(2) "Health care provider" means a natural person who is:

(a) defined as a health care provider in Section 78B-3-403; and

(b) licensed under this title.

(3) (a) This section does not provide authority for a health care provider to advertise the services offered by the health care provider.

(b) If a health care provider's licensing authority and professional ethics permit the health care provider to advertise, the provisions of this section apply to any advertisement for the health care provider's services, on or after July 1, 2011.

(4) An advertisement for a health care provider's services that includes the health care provider's name shall identify the license type, as used by the division, under which the health care provider is practicing.

(5) (a) A physician licensed under Chapter 67, Utah Medical Practice Act, may comply with the requirements of this section by using any one of the designations in the definitions of "practice of medicine" in Section 58-67-102.

(b) A physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act, may comply with this section by using any of the designations in the definition of "practice of osteopathic medicine" in Section 58-68-102.

(6) It is unprofessional conduct if a health care provider violates this section.

CHAPTER 140
S. B. 144
Passed February 18, 2011
Approved March 21, 2011
Effective May 10, 2011

COUNTY PURCHASING AGENT AMENDMENTS

Chief Sponsor: Margaret Dayton
House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill amends county purchasing agent provisions.

Highlighted Provisions:

This bill:

- authorizes, under certain circumstances, the county executive to:
  - locate a county purchasing agent's office in the county auditor's office; and
  - delegate supervision of the county purchasing agent to the county auditor; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-53-307, as renumbered and amended by Laws of Utah 2000, Chapter 133

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

Section 1. Section 17-53-307 is amended to read:

17-53-307. County purchasing agent -- Appointment -- Compensation -- Oath -- Supervision -- Duties.

(1) The county executive, with the advice and consent of the county legislative body, in each county having a taxable value in excess of $500,000,000 may appoint a county purchasing agent.

(2) The agent shall qualify by taking, subscribing, and filing the constitutional oath and giving bond to the county in a sum fixed by the county legislative body.

(3) (a) The county purchasing agent shall, under the direction and supervision of the county executive and except as provided in Subsection (3)(b):

[~~(a)~~] (i) negotiate for the purchase of or contract for all supplies and materials required by the county;

[~~(b)~~] (ii) submit all contracts and purchases negotiated by the purchasing agent under Subsection (3)(a)(i) to the county executive for approval and ratification; and

[~~(c)~~] (iii) keep an accurate and complete record of all purchases and a detailed disposition of them and, when required by the county legislative body, make a complete and detailed report to it of business transacted.

(b) Subject to Subsection (3)(c), the county executive may structure the county purchasing agent's office so that:

(i) the county purchasing agent's office is physically located within the county auditor's office; and

(ii) the county purchasing agent receives direction and supervision from the county auditor.

(c) The county executive:

(i) may not structure the county purchasing agent's office as described in Subsection (3)(b) unless:

(A) the county executive receives the advice and consent of the county council; and

(B) the county executive and county auditor agree, in writing, to the proposed structure, including the level of direction and supervision of the county purchasing agent retained by the county executive; and

(ii) shall maintain the level of direction and supervision over the county purchasing agent as agreed upon with the county auditor.

(4) The county executive may exclude from the purchasing agent's responsibility a county clerk's duties concerning elections or a sheriff's duties under Section 17-22-8.

CHAPTER 141
S. B. 149
Passed March 10, 2011
Approved March 21, 2011
Effective March 21, 2011

QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: David Clark

LONG TITLE

General Description:

This bill amends the qualification necessary for the executive director of the Department of Health.

Highlighted Provisions:

This bill:

- amends the qualifications necessary for the executive director of the Department of Health.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

26-1-9, as last amended by Laws of Utah 1993, Chapter 219

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

Section 1. Section 26-1-9 is amended to read:

26-1-9. Executive director -- Qualifications.

(1) [~~The~~] Except as provided in Subsection (2), the executive director shall[~~: (a) (i)~~] be a physician who is a graduate of a regularly chartered and legally constituted medical school, licensed to practice medicine and surgery in all branches in the state [~~and~~], who [~~shall have~~] has successfully completed:

(a) a master's degree of public health from an accredited school of public health or from an accredited program of public health and [~~have~~] has at least three years professional full-time experience in a senior level administrative capacity; or

[~~(ii) be a physician who is a graduate of a regularly chartered and legally constituted medical school, licensed to practice medicine and surgery in all branches in the state and who shall have successfully completed~~]

(b) at least one year's graduate work in an accredited school of public health and [~~have~~] has at least five years professional full-time experience, of which at least three years have been in public health in a senior level administrative capacity[~~;~~].

(2) If the executive director is not a physician under Subsection (1), the executive director shall:

[~~(iii)~~] (a) (i) have successfully completed at least a master's degree of public health or public administration from an accredited school of public health or from an accredited program of public health or public administration; and

(ii) have at least five years of professional full-time experience, of which at least [~~three~~] two years have been in public health in a senior level administrative capacity; or

[~~(iv)~~] (b) have at least seven years of professional full-time experience in public health programs, of which at least five years have been in a senior level administrative capacity[~~; and~~].

[~~(b)~~] (3) An executive director shall be thoroughly informed and experienced in all aspects of public health work.

[~~(2)~~] (4) If the executive director is not a physician, the deputy director of the department shall be a physician who has successfully completed at least one year's graduate work in an accredited school of public health or an accredited program of public health.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 142
S. B. 237
Passed March 8, 2011
Approved March 21, 2011
Effective May 10, 2011

POLLUTION CONTROL FACILITY AMENDMENTS

Chief Sponsor: Lyle W. Hillyard
House Sponsor: David G. Butterfield

LONG TITLE

General Description:

This bill authorizes a person that operates a pollution control facility pursuant to an agreement to apply for a sales and use tax exemption.

Highlighted Provisions:

This bill:

- authorizes a person that operates a pollution control facility pursuant to an agreement to apply for a sales and use tax exemption; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-2-124, as last amended by Laws of Utah 2008, Chapter 30

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

Section 1. Section 19-2-124 is amended to read:

19-2-124. Application for certification of pollution control facility -- Refunds -- Interest.

(1) (a) A person who qualifies under Subsection (2) may apply to the board for certification of a pollution control facility erected, constructed, or installed, or to be erected, constructed, or installed in the state.

(b) The person may file the application after:

(i) a firm construction contract has been entered; or

(ii) construction has commenced.

(2) (a) (i) A person who applies under Subsection (1) shall be:

(A) the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution; [~~or~~]

(B) a person [~~who~~] that, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property[~~.~~]; or

(C) a person that operates a pollution control facility pursuant to an agreement with an owner described in Subsection (2)(a)(i)(A) or a person described in Subsection (2)(a)(i)(B).

(ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.

(b) The facility shall be owned, operated, or leased during a part of the tax year in which the exemption is claimed.

(c) A person who obtains certification for a pollution control facility may claim an exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104.

(d) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that:

(i) is not certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the board subsequently certifies the pollution control facility;

(B) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11), except for the certification requirement; and

(C) the person files a claim for the refund with the State Tax Commission within the lesser of:

(I) three years after the day on which the pollution control facility is certified under Section 19-2-125; or

(II) six years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) is certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11); and

(B) the person files a claim for the refund with the State Tax Commission within three years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was not certified under Section 19-2-125 at the time of the purchase:

(A) within 180 days after the day on which the board certifies the pollution control facility, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning on the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act, for which the person is claiming a refund; or

(B) more than 180 days after the day on which the board certifies the pollution control facility, interest shall be added to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning 30 days after the day on which the person files the claim for a refund under Subsection (2)(d).

(ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was certified under Section 19-2-125 at the time of the purchase, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(A) at the rate prescribed in Section 59-1-402; and

(B) beginning 30 days after the day on which the person files a claim for a refund under Subsection (2)(d).

(3) (a) Each application shall:

(i) be in a format prescribed by the board; and

(ii) contain:

(A) a description of the facility and materials incorporated in the facility;

(B) the machinery and equipment;

(C) the existing or proposed operational procedure; and

(D) a statement of the purpose of pollution prevention, control, or reduction served or to be served by the facility.

(b) The board may require any further information it finds necessary before issuance of a certificate.

CHAPTER 143
S. B. 274
Passed March 9, 2011
Approved March 21, 2011
Effective May 10, 2011

COURT BUDGET AMENDMENTS

Chief Sponsor: John L. Valentine
House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill makes changes in two court restricted accounts to allow more flexibility within the court's budget.

Highlighted Provisions:

This bill:

- allows the Justice Court Technology, Security, and Training Account to also cover expenditures for justice court audit expenditures; and
- adds information technology to the list of expenditures permitted by the Court Reporter Technology Account.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-2-408, as last amended by Laws of Utah 2010, Chapter 34
78A-7-301, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78A-2-408 is amended to read:

78A-2-408. Transcripts and copies -- Fees.

(1) The Judicial Council shall by rule provide for a standard page format for transcripts of court hearings.

(2) (a) The fee for a transcript of a court session, or any part of a court session, shall be $3.50 per page, which includes the initial preparation of the transcript and one certified copy. The preparer shall deposit the original text file and printed transcript with the clerk of the court and provide the person requesting the transcript with the certified copy. The cost of additional copies shall be as provided in Subsection 78A-2-301(1). The transcript for an appeal shall be prepared within the time period permitted by the rules of Appellate Procedure. The fee for a transcript prepared within three business days of the request shall be 1-1/2 times the base rate. The fee for a transcript prepared within one business day of the request shall be double the base rate.

(b) When a transcript is ordered by the court, the fees shall be paid by the parties to the action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case in which the defendant is found to be impecunious shall be paid pursuant to Section 77-32-305.

(c) There is established within the General Fund a restricted account known as the Court Reporting Technology Account. The clerk of the court shall transfer to the state treasurer for deposit into this account all fees received under this section. The state court administrator may draw upon this account for the purchase, development, and maintenance of court reporting technologies, information technology, and [~~for~~] other expenses necessary for maintaining a verbatim record of court sessions.

(3) The fee for the preparation of a transcript of a court hearing by an official court transcriber and the fee for the preparation of the transcript by a certified court reporter of a hearing before any court, referee, master, board, or commission of this state shall be as provided in Subsection (2)(a), and shall be payable to the person preparing the transcript.

Section 2. Section 78A-7-301 is amended to read:

78A-7-301. Justice Court Technology, Security, and Training Account established -- Funding -- Uses.

There is created a restricted account in the General Fund known as the Justice Court Technology, Security, and Training Account.

(1) The state treasurer shall deposit in the account money collected from the surcharge established in Subsection 78A-6-122(3)(b)(iii).

(2) Money shall be appropriated from the account to the Administrative Office of the Courts to [~~only~~] be used for audit, technology, security, and training needs in justice courts throughout the state.

CHAPTER 144
S. B. 290
Passed March 3, 2011
Approved March 21, 2011
Effective May 10, 2011

ABATEMENT OF WEEDS, GARBAGE, REFUSE, AND UNSIGHTLY OBJECTS

Chief Sponsor: Peter C. Knudson
House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends provisions authorizing a municipal legislative body to regulate the abatement of weeds, garbage, refuse, or unsightly objects.

Highlighted Provisions:

This bill:

- provides that an owner or occupant may select a person to provide an abatement service with certain exceptions; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 268, Municipal Enforcement Regarding Property Maintenance, by providing substantive and technical amendments.

Utah Code Sections Affected:

AMENDS:

10-11-1, as last amended by Laws of Utah 2003, Chapter 292

Utah Code Sections Affected by Coordination Clause:

10-11-1, as last amended by Laws of Utah 2003, Chapter 292

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

Section 1. Section 10-11-1 is amended to read:

10-11-1. Abatement of weeds, garbage, refuse, and unsightly objects -- Selection of service provider.

(1) A municipal legislative body may designate, and regulate the abatement of, injurious and noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures, and may appoint a municipal inspector for the purpose of carrying out the provisions of this chapter.

(2) Except as provided in Subsection (3), a municipal legislative body may not:

(a) prohibit an owner or occupant of real property within the municipality's jurisdiction, including an owner or occupant who receives a notice in accordance with Section 10-11-2, from selecting a person, as defined in Section 10-1-104, to provide an abatement service for injurious and noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures; or

(b) require that an owner or occupant described in Subsection (2)(a) use the services of the municipal inspector or any assistance employed by the municipal inspector described in Section 10-11-3 to provide an abatement service described in Subsection (2)(a).

(3) A municipality may require that an owner or occupant described in Subsection (2)(a) use the abatement services, as described in Section 10-11-3, of the municipal inspector or any assistance employed by the municipal inspector if:

(a) the municipality adopts an ordinance providing a reasonable period of time for an owner or occupant to abate the owner's or occupant's property after receiving a notice described in Section 10-11-2; and

(b) the owner or occupant fails to abate the property within the reasonable period of time and in accordance with the notice.

Section 2. Coordinating S.B. 290 with H.B. 268 -- Substantive and technical amendments.

If this S.B. 290 and H.B. 268, Municipal Enforcement Regarding Property Maintenance, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by modifying Subsection 10-11-1(2)(a) to read:

"(2) A municipal legislative body may not:

(a) prohibit an owner or occupant of real property within the municipality's jurisdiction, including an owner or occupant who receives a notice in accordance with Section 10-11-2, from selecting a person, as defined in Section 10-1-104, to provide an abatement service for injurious and noxious weeds, garbage and refuse, a public nuisance, or an illegal object or structure; or".

CHAPTER 145
S. B. 300
Passed March 9, 2011
Approved March 21, 2011
Effective March 21, 2011

GOVERNMENT BONDING AMENDMENTS

Chief Sponsor: Benjamin M. McAdams
House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill amends provisions authorizing a political subdivision to issue a bond.

Highlighted Provisions:

This bill:

- amends bond provisions of the Interlocal Cooperation Act, including authorizing an interlocal entity to delegate certain authority related to a bond;
- amends provisions of the Local Government Bonding Act, including authorizing a local government to delegate certain authority related to a bond;
- amends provisions requiring a governing body to publish notice of a bond;
- amends provisions of the Utah Industrial Facilities and Development Act, including authorizing a governing body to delegate certain authority related to a bond;
- amends provisions of the Utah Refunding Bonding Act, including authorizing a governing body to delegate certain authority related to a bond;
- amends provisions of the Assessment Area Act, including authorizing a local entity to delegate certain authority related to a bond; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

11-13-218, as renumbered and amended by Laws of Utah 2002, Chapter 286
11-14-302, as last amended by Laws of Utah 2010, Chapter 378
11-14-316, as last amended by Laws of Utah 2009, Chapter 388
11-17-4.6, as enacted by Laws of Utah 1985, Chapter 128
11-17-16, as last amended by Laws of Utah 2009, Chapter 388
11-27-3, as last amended by Laws of Utah 2005, Chapter 105
11-27-4, as last amended by Laws of Utah 2009, Chapter 388
11-42-605, as last amended by Laws of Utah 2009, Chapter 246

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

Section 1. Section 11-13-218 is amended to read:

11-13-218. Authority of public agencies or interlocal entities to issue bonds.

(1) A public agency may, in the same manner as it may issue bonds for its individual acquisition of a facility or improvement or for constructing, improving, or extending a facility or improvement, issue bonds to:

(a) acquire an interest in a jointly owned facility or improvement, a combination of a jointly owned facility or improvement, or any other facility or improvement; or

(b) pay all or part of the cost of constructing, improving, or extending a jointly owned facility or improvement, a combination of a jointly owned facility or improvement, or any other facility or improvement.

(2) (a) An interlocal entity may issue bonds or notes under a resolution, trust indenture, or other security instrument for the purpose of financing its facilities or improvements.

(b) The bonds or notes may be sold at public or private sale, mature at such times and bear interest at such rates, and have such other terms and security as the entity determines.

(c) Such bonds are not a debt of any public agency that is a party to the agreement.

(3) The governing body, as defined in Section 11-13-219, of an interlocal entity may, by resolution, delegate to one or more officers of the interlocal entity or to a committee of designated members of the governing body the authority to:

(a) in accordance with and within the parameters set forth in the resolution, approve the final interest rate, price, principal amount, maturity, redemption features, or other terms of a bond or note; and

(b) approve and execute all documents relating to the issuance of the bond or note.

[~~(3)~~] (4) Bonds and notes issued under this chapter are declared to be negotiable instruments and their form and substance need not comply with the Uniform Commercial Code.

Section 2. Section 11-14-302 is amended to read:

11-14-302. Resolution -- Negotiability -- Registration -- Maturity -- Interest -- Payment -- Redemption -- Combining issues -- Sale -- Financing plan.

(1) (a) Bonds issued under this chapter:

(i) shall:

(A) be authorized by resolution of the governing body[~~, shall~~];

(B) be fully negotiable for all purposes[~~, may be made registrable as to principal alone or as to principal and interest, shall~~];

(C) mature at such time or times not more than 40 years from their date[~~, shall~~];

(D) bear interest at such rate or rates, if any[~~, shall~~];

(E) be payable at such place or places[~~, shall~~];

(F) be in such form[~~, shall~~];

(G) be executed in such manner[~~, may be made redeemable prior to maturity at such times and on such terms, shall~~];

(H) be sold in such manner and at such prices, either at, in excess of, or below face value[~~, and generally shall~~]; and

(I) be issued in such manner and with such details as may be provided by resolution; [~~it being the express intention of the legislature that interest~~] and

(ii) may be made:

(A) registrable as to principal alone or as to principal and interest; or

(B) redeemable prior to maturity at such times and on such terms.

(b) Interest rate limitations elsewhere appearing in the laws of Utah do not apply to nor limit the rate of interest on bonds issued under this chapter. [~~The resolution shall specify either the rate or rates of interest, if any, on the bonds or specify the method~~]

(2) (a) If the bonds bear interest at a variable rate or rates, the resolution described in Subsection (1)(a)(i)(A) shall provide for the establishment of a method or methods by which the interest rate or rates on the bonds may be determined [~~while the bonds are outstanding~~].

(b) If the resolution specifies a method by which interest on the bonds may be determined, the resolution shall also specify the maximum rate of interest the bonds may bear.

(c) Bonds voted for different purposes by separate propositions at the same or different bond elections may in the discretion of the governing body be combined and offered for sale as one issue of bonds.

(d) The resolution providing for this combination and the printed bonds for the combined issue shall separately set forth the amount being issued for each of the purposes provided for in each proposition submitted to the electors.

(e) If the local political subdivision has retained a fiscal agent to assist and advise it with respect to the bonds and the fiscal agent has received or is to receive a fee for such services, the bonds may be sold to the fiscal agent but only if the sale is made pursuant to a sealed bid submitted by the fiscal agent at an advertised public sale.

(f) The governing body may, by resolution, delegate to one or more officers of the local political subdivision the authority to:

(i) in accordance with and within the parameters set forth in the resolution, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and

(ii) approve and execute all documents relating to the issuance of a bond.

[~~(2)~~] (3) (a) (i) All bonds shall be paid by the treasurer of the local political subdivision or the treasurer's duly authorized agent on their respective maturity dates or on the dates fixed for the bonds redemption.

(ii) All bond coupons, other than coupons cancelled because of the redemption of the bonds to which they apply, shall similarly be paid on their respective dates or as soon thereafter as the bonds or coupons are surrendered.

(b) Upon payment of a bond or coupon, the treasurer of the local political subdivision or the treasurer's duly authorized agent, shall perforate the bond or coupon with a device suitable to indicate payment.

(c) Any bonds or coupons which have been paid or cancelled may be destroyed by the treasurer of the local political subdivision or by the treasurer's duly authorized agent.

[~~(3)~~] (4) (a) Bonds, bond anticipation notes, or tax anticipation notes with maturity dates of one year or less may be authorized by a local political subdivision from time to time pursuant to a plan of financing adopted by the governing body.

(b) The plan of financing shall specify the terms and conditions under which the bonds or notes may be issued, sold, and delivered, the officers of the local political subdivision authorized to issue the bonds or notes, the maximum amount of bonds or notes which may be outstanding at any one time, the source or sources of payment of the bonds or notes, and all other details necessary for issuance of the bonds or notes.

(c) Subject to the Constitution, the governing body of the local political subdivision may include in the plan of financing the terms and conditions of agreements which may be entered into by the local political subdivision with banking institutions for letters of credit or for standby letters of credit to secure the bonds or notes, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the local political subdivision.

Section 3. Section 11-14-316 is amended to read:

11-14-316. Publication of notice, resolution, or other proceeding -- Contest.

(1) The governing body of any local political subdivision may provide for the publication of any resolution or other proceeding adopted under this chapter:

(a) in a newspaper having general circulation in the local political subdivision; and

(b) as required in Section 45-1-101.

(2) When publication involves a resolution or other proceeding providing for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing:

(a) the name of the issuer;

(b) the purpose of the issue;

(c) the type of bonds and the maximum principal amount which may be issued;

(d) the maximum number of years over which the bonds may mature;

(e) the maximum interest rate which the bonds may bear, if any;

(f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold; [~~and~~]

(g) a general description of the security pledged for repayment of the bonds; and

[~~(g)~~] (h) the times and place where a copy of the resolution or other proceeding may be examined, which shall be:

(i) at an office of the issuer;

(ii) identified in the notice;

(iii) during regular business hours of the issuer as described in the notice; and

(iv) for a period of at least 30 days after the publication of the notice.

(3) For a period of 30 days after the publication, any person in interest may contest:

(a) the legality of such resolution or proceeding;

(b) any bonds which may be authorized by such resolution or proceeding; or

(c) any provisions made for the security and payment of the bonds.

(4) A person shall contest the matters set forth in Subsection (3) by filing a verified written complaint in the district court of the county in which he resides within the 30-day period.

(5) After the 30-day period, no person may contest the regularity, formality, or legality of the resolution or proceeding for any reason.

Section 4. Section 11-17-4.6 is amended to read:

11-17-4.6. Bonds -- Terms specified by governing body.

The proceedings of the governing body under which the bonds are authorized to be issued may:

(1) [~~specify either the rate of interest on the bonds or~~] if the bonds bear interest at a variable rate or rates, specify the [~~method, formula~~] methods, formulas, or indices by which [~~a variable~~] the interest rate or rates on the bonds may be determined [~~while the bonds are outstanding; and~~];

(2) specify the terms and conditions under which the bonds may be issued, sold, and delivered, the officer of the issuing municipality, county, or state university responsible for the issuance, execution, and delivery of the bonds, the maximum amount of bonds which may be outstanding at any one time, the source of payment of the bonds, which may include the proceeds of refunding bonds issued under this chapter, and all other details necessary or appropriate for the issuance of bonds not inconsistent with this chapter[~~.~~]; and

(3) delegate, by resolution, to one or more officers of the issuing municipality, county, or state university the authority to:

(a) in accordance with and within the parameters set forth in the resolution, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and

(b) approve and execute all documents relating to the issuance of the bonds.

Section 5. Section 11-17-16 is amended to read:

11-17-16. Publication of resolutions and notice of bonds to be issued.

(1) (a) The governing body may provide for the publication of any resolution or other proceeding adopted by it under this chapter, including all resolutions providing for the sale or lease of any land by the municipality, county, or state university in connection with the establishment, acquisition, development, maintenance, and operation of an industrial park.

(b) (i) The publication shall be:

(A) in a newspaper qualified to carry legal notices having general circulation in the municipality or county; or

(B) in the case of a state university, in a newspaper of general circulation in the county within which the principal administrative office of the state university is located; and

(ii) as required in Section 45-1-101.

(2) In case of a resolution or other proceeding providing for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing:

(a) the name of the issuer;

(b) the purpose of the issue;

(c) the name of the users, if known; [~~and~~]

(d) the maximum principal amount which may be issued;

(e) the maximum number of years over which the bonds may mature; and

[~~(d)~~] (f) the times and place where a copy of the resolution or other proceeding may be examined,

which shall be at an office of the issuer, identified in the notice, during regular business hours of the issuer as described in the notice and for a period of at least 30 days after the publication of the notice.

(3) For a period of 30 days after publication any person in interest may contest the legality of the resolution, proceeding, any bonds which may be authorized under them, or any provisions made for the security and payment of the bonds. After expiration of the 30-day period no person may contest the regularity, formality, or legality of the resolution, proceedings, bonds, or security provisions for any cause.

Section 6. Section 11-27-3 is amended to read:

11-27-3. Action by resolution of governing body -- Purposes for bond issue -- Exchange or sale -- Interest rate limitations inapplicable -- Principal amount -- Investment of proceeds -- Safekeeping and application of proceeds -- Computing indebtedness -- Payment of bonds -- Combination issues -- Laws applicable to issuance -- Payment from taxes or pledged revenues.

(1) Any formal action taken by the governing body of a public body under the authority of this chapter may be taken by resolution of that governing body.

(2) (a) The governing body of any public body may by resolution provide for the issuance of refunding bonds to refund outstanding bonds issued by the public body or its predecessor, either prior to or after the effective date of this chapter, only:

(i) to pay or discharge all or any part of any outstanding series or issue of bonds, including applicable interest, in arrears or about to become due and for which sufficient funds are not available;

(ii) to achieve a savings; or

(iii) to achieve another objective that the governing body finds to be beneficial to the public body.

(b) Any refunding bonds may be delivered in exchange for the outstanding bonds being refunded or may be sold in a manner, at terms, with details, and at a price above, at, or below par as the governing body determines advisable. The refunding bonds may be issued without an election, unless an election is required by the Utah Constitution.

(c) The governing body may, by resolution, delegate to one or more officers of the local political subdivision the authority to:

(i) in accordance with and within the parameters set forth in the resolution, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and

(ii) approve and execute all documents relating to the issuance of a bond.

[~~(c)~~] (d) It is the express intention of the Legislature that interest rate limitations elsewhere appearing in the laws of the state not apply to nor limit the rates of interest borne by refunding bonds.

(3) Advance refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded as determined by the governing body. This amount may be equal to the full amount required to pay the principal of, interest on, and redemption premiums, if any, due in connection with the bonds to be refunded to and including their dates of maturity or redemption in accordance with the advance refunding plan adopted by the governing body, together with all costs incurred in accomplishing this refunding. The principal amount of refunding bonds may be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the retirement or redemption of the bonds to be refunded. Any reserves held or taxes levied or collected to secure the bonds to be refunded may be applied to the redemption or retirement of the bonds, or otherwise, as the governing body may determine.

(4) Prior to the application of the proceeds derived from the sale of advance refunding bonds to the purposes for which the bonds have been issued, these proceeds, together with any other legally available funds, including reserve funds, may be invested and reinvested only in government obligations maturing at such times as may be required to provide funds sufficient to pay principal of, interest on, and redemption premiums, if any, due in connection with the bonds to be refunded or the advance refunding bonds, or both, in accordance with the advance refunding plan. To the extent incidental expenses have been capitalized, these bond proceeds may be used to defray these expenses.

(5) The governing body may contract regarding the safekeeping and application of the proceeds of sale of advance refunding bonds and other funds included with them and the income from them, including the right to appoint a trustee, which may be any trust company or state or national bank having powers of a trust company inside or outside the state. The governing body may provide in the advance refunding plan that until such monies are required to redeem or retire the bonds to be refunded, the advance refunding bond proceeds and other funds, and the income from them, shall be used to pay and secure payment of principal of, interest on, and redemption premiums, if any, due in connection with all or a portion of the advance refunding bonds or the bonds being refunded, or both.

(6) In computing indebtedness for the purpose of any applicable constitutional or statutory debt limitation, there shall be deducted from the amount of outstanding indebtedness the principal amount of outstanding general obligation bonds for the payment of which there has been dedicated and deposited in escrow government obligations, the principal of or interest on which, or both, will be sufficient to provide for the payment of these general obligation bonds as to principal, interest,

and redemption premiums, if any, when due at maturity or upon some earlier date upon which the bonds have been called for redemption in accordance with their terms.

(7) When a public body has irrevocably set aside for and pledged to the payment of bonds to be refunded proceeds of advance refunding bonds and other monies in amounts which, together with known earned income from their investment, will be sufficient in amount to pay the principal of, interest on, and any redemption premiums due on the bonds to be refunded as the same become due and to accomplish the refunding as scheduled, the refunded bonds shall be considered duly paid and discharged for the purpose of any applicable constitutional or statutory debt limitation.

(8) Refunding bonds and bonds issued for any other purpose may be issued separately or issued in combination in one or more series or issues by the same issuer.

(9) Except as specifically provided in this section, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer being refunded in effect either at the time of the issuance of the refunding bonds or at the time of issuance of the bonds to be refunded. Refunding bonds and coupons, if any, pertaining to them may bear facsimile signatures as provided in Section 11-14-304.

(10) Refunding bonds may be made payable from any taxes or pledged revenues, or both, or any assessments, special improvement guaranty funds, or other funds which might be legally pledged for the payment of the bonds to be refunded at the time of the issuance of the refunding bonds or at the time of the issuance of the bonds to be refunded, as the governing body may determine.

Section 7. Section 11-27-4 is amended to read:

11-27-4. Publication of resolution -- Notice of bond issue -- Contest of resolution or proceeding.

(1) The governing body of any public body may provide for the publication of any resolution or other proceeding adopted by it under this chapter:

(a) in a newspaper having general circulation in the public body; and

(b) as required in Section 45-1-101.

(2) In case of a resolution or other proceeding providing for the issuance of refunding bonds (or for a combined issue of refunding bonds and bonds issued for any other purpose), the governing body may, instead of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, entitled accordingly, and containing:

(a) the name of the issuer;

(b) the purposes of the issue;

(c) the maximum principal amount which may be issued;

(d) the maximum number of years over which the bonds may mature;

(e) the maximum interest rate which the bonds may bear;

(f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold[~~, and any deposit to be required in connection with the sale; and~~];

(g) a general description of the security pledged for repayment of the bonds; and

[~~(g)~~] (h) the times and place where a copy of the resolution or other proceeding authorizing the issuance of the bonds may be examined, which shall be at an office of the governing body identified in the notice, during regular business hours of the governing body as described in the notice and for a period of at least 30 days after the publication of the notice.

(3) For a period of 30 days after the publication, any person in interest shall have the right to contest the legality of the resolution or proceeding or any bonds which may be so authorized or any provisions made for the security and payment of these bonds; and after this time no person shall have any cause of action to contest the regularity, formality, or legality thereof for any cause.

Section 8. Section 11-42-605 is amended to read:

11-42-605. Local entity may authorize the issuance of assessment bonds -- Limit on amount of bonds -- Features of assessment bonds.

(1) After the 25-day prepayment period under Subsection 11-42-411(6) has passed or, if the 25-day prepayment period is waived under Section 11-42-104, after the assessment resolution or ordinance takes effect, a local entity may authorize the issuance of bonds to pay the costs of improvements in an assessment area, and other related costs, against the funds that the local entity will receive because of an assessment in an assessment area.

(2) A local entity may, by resolution or ordinance, delegate to one or more officers of the issuer the authority to:

(a) in accordance with and within the parameters set forth in the resolution or ordinance, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and

(b) approve and execute all documents relating to the issuance of a bond.

[~~(2)~~] (3) The aggregate principal amount of bonds authorized under Subsection (1) may not exceed the unpaid balance of assessments at the end of the 25-day prepayment period under Subsection 11-42-411(6).

[~~(3)~~] (4) Assessment bonds issued under this section:

(a) are fully negotiable for all purposes;

(b) shall mature at a time that does not exceed the period that installments of assessments in the assessment area are due and payable, plus one year;

(c) shall bear interest at the lowest rate or rates reasonably obtainable;

(d) may not be dated earlier than the effective date of the assessment ordinance;

(e) shall be payable at the place, shall be in the form, and shall be sold in the manner and with the details that are provided in the resolution authorizing the issuance of the bonds;

(f) shall be issued in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act; and

(g) provide that interest be paid semiannually, annually, or at another interval as specified by the governing body.

[~~(4)~~] (5) (a) A local entity may:

(i) (A) provide that assessment bonds be callable for redemption before maturity; and

(B) fix the terms and conditions of redemption, including the notice to be given and any premium to be paid;

(ii) subject to Subsection [~~(4)~~] (5)(b), require assessment bonds to bear interest at a fixed or variable rate, or a combination of fixed and variable rates;

(iii) specify terms and conditions under which:

(A) assessment bonds bearing interest at a variable interest rate may be converted to bear interest at a fixed interest rate; and

(B) the local entity agrees to repurchase the bonds;

(iv) engage a remarketing agent and indexing agent, subject to the terms and conditions that the governing body agrees to; and

(v) include all costs associated with assessment bonds, including any costs resulting from any of the actions the local entity is authorized to take under this section, in an assessment levied under Section 11-42-401.

(b) If assessment bonds carry a variable interest rate, the local entity shall specify:

(i) the basis upon which the variable rate is to be determined over the life of the bonds;

(ii) the manner in which and schedule upon which the rate is to be adjusted; and

(iii) a maximum rate that the bonds may carry.

[~~(5)~~] (6) (a) Nothing in this part may be construed to authorize the issuance of assessment bonds to pay for the cost of ordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalks.

(b) Notwithstanding Subsection [~~(5)~~] (6)(a), a local entity may issue assessment bonds to pay for extraordinary repairs to pavement, sewers, drains, curbing, gutters, or sidewalk.

(c) A local entity's governing body may define by resolution or ordinance what constitutes ordinary repairs and extraordinary repairs for purposes of this Subsection [~~(5)~~] (6).

(d) Nothing in this Subsection [~~(5)~~] (6) may be construed to limit a local entity from levying an assessment within an assessment area to pay operation and maintenance costs as described in a notice under Section 11-42-402.

[~~(6)~~] (7) If a local entity has issued interim warrants under Section 11-42-601 or bond anticipation notes under Section 11-42-602 in anticipation of assessment bonds that the local entity issues under this part, the local entity shall provide for the retirement of the interim warrants or bond anticipation notes contemporaneously with the issuance of the assessment bonds.

Section 9. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 146
S. B. 301
Passed March 10, 2011
Approved March 21, 2011
Effective May 10, 2011

PUBLIC TRANSIT REVISIONS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Stephen G. Handy

LONG TITLE

General Description:

This bill modifies the Public Transit District Act by amending provisions relating to public transit.

Highlighted Provisions:

This bill:

- amends definitions;
- provides that a public transit district's introduction, maintenance, or operation of a system may not be considered to be the establishment of a public transit service or system for certain restrictions if the service or system is introduced, maintained, or operated by the public transit district:
  - as part of a program of projects approved by the Federal Transit Administration;
  - in cooperation with the state or a political subdivision of the state, pursuant to an interlocal agreement; or
  - in accordance with the Travel Reduction Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-2a-802, as last amended by Laws of Utah 2010, Chapter 281
17B-2a-805, as enacted by Laws of Utah 2007, Chapter 329

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

Section 1. Section 17B-2a-802 is amended to read:

17B-2a-802. Definitions.

As used in this part:

(1) "Appointing entity" means the person, county, unincorporated area of a county, or municipality appointing a member to a public transit district board of trustees.

(2) (a) "Chief executive officer" means a person appointed by the board of trustees to serve as chief executive officer.

(b) "Chief executive officer" shall enjoy all the rights, duties, and responsibilities defined in Sections 17B-2a-810 and 17B-2a-811 and includes all rights, duties, and responsibilities assigned to the general manager but prescribed by the board of trustees to be fulfilled by the chief executive officer.

(3) "Department" means the Department of Transportation created in Section 72-1-201.

(4) (a) "General manager" means a person appointed by the board of trustees to serve as general manager.

(b) "General manager" shall enjoy all the rights, duties, and responsibilities defined in Sections 17B-2a-810 and 17B-2a-811 prescribed by the board of trustees.

(5) (a) "Locally elected public official" means a person who holds an elected position with a county or municipality.

(b) "Locally elected public official" does not include a person who holds an elected position if the elected position is not with a county or municipality.

(6) "Multicounty district" means a public transit district located in more than one county.

(7) "Operator" means a public entity or other person engaged in the transportation of passengers for hire.

(8) "Public transit" means the transportation of passengers only and their incidental baggage by means other than:

(a) chartered bus;

(b) sightseeing bus; or

(c) taxi[~~; or~~].

[~~(d) other vehicle not on an individual passenger fare paying basis.~~]

(9) "Transit facility" means a transit vehicle, transit station, depot, passenger loading or unloading zone, parking lot, or other facility:

(a) leased by or operated by or on behalf of a public transit district; and

(b) related to the public transit services provided by the district, including:

(i) railway or other right-of-way;

(ii) railway line; and

(iii) a reasonable area immediately adjacent to a designated stop on a route traveled by a transit vehicle.

(10) "Transit-oriented development" means a mixed-use residential or commercial area that is designed to maximize access to public transit.

(11) "Transit vehicle" means a passenger bus, coach, railcar, van, or other vehicle operated as public transportation by a public transit district.

Section 2. Section 17B-2a-805 is amended to read:

17B-2a-805. Limitations on authority of a public transit district.

(1) A public transit district may not exercise control over a transit facility or public transit service or system owned or operated inside or

outside the district by a governmental entity unless, upon mutually agreeable terms, the governmental entity consents.

(2) (a) A public transit district may not establish, directly or indirectly, a public transit service or system, or acquire a facility necessary or incidental to a public transit service or system, in a manner or form that diverts, lessens, or competes for the patronage or revenue of a preexisting system of a publicly or privately owned public carrier furnishing like service, unless the district obtains the consent of the publicly or privately owned carrier.

(b) A public transit district's maintenance and operation of an existing system that the district acquires from a publicly or privately owned public carrier may not be considered to be the establishment of a public transit service or system under this Subsection (2).

(c) A public transit district's introduction, maintenance, or operation of a system may not be considered to be the establishment of a public transit service or system under this Subsection (2) if the service or system is introduced, maintained, or operated by the public transit district:

(i) as part of a program of projects approved by the Federal Transit Administration;

(ii) in cooperation with the state or a political subdivision of the state, pursuant to an interlocal agreement; or

(iii) in accordance with Title 72, Chapter 12, Travel Reduction Act.

CHAPTER 147
H. B. 13
Passed February 18, 2011
Approved March 22, 2011
Effective May 10, 2011

IMMUNIZATIONS FOR TEEN MOTHERS

Chief Sponsor: Jennifer M. Seelig
Senate Sponsor: Curtis S. Bramble
Cosponsors: Rebecca Chavez-Houck
Susan Duckworth
Rebecca P. Edwards
Don L. Ipson
David Litvack
Carol Spackman Moss
Jeremy A. Peterson
Marie H. Poulson
Paul Ray
Evan J. Vickers

LONG TITLE

General Description:

This bill amends the Health Code to allow a minor who is the parent of a child, or who is pregnant, to consent to immunizations.

Highlighted Provisions:

This bill:

- defines terms;
- replaces the term "crippled children" with "children with disabilities";
- allows minors who are pregnant or who have custody of a child to consent to immunizations in certain circumstances;
- defines the immunizations for which a minor may provide consent;
- establishes the legal effect of the minor's consent for immunizations; and
- provides that a parent or guardian of a minor who consents to an immunization is not responsible for the fees associated with the immunization unless the parent or guardian consented to the immunization.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-10-1, as last amended by Laws of Utah 2001, Chapter 73
26-10-2, as enacted by Laws of Utah 1981, Chapter 126

ENACTS:

26-10-9, Utah Code Annotated 1953

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

Section 1. Section 26-10-1 is amended to read:

26-10-1. Definitions.

As used in this chapter:

(1) "Maternal and child health services" means:

(a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this [~~section~~] Subsection (1) shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;

(b) the development, strengthening, and improvement of standards and techniques relating to the services and care;

(c) the training of personnel engaged in the provision, development, strengthening, or improvement of the services and care; and

(d) necessary administrative services connected with Subsections (1)(a), (b), and (c).

[~~(2) "Crippled children's services" means:~~]

(2) "Minor" means a person under the age of 18.

(3) "Services to children with disabilities" means:

(a) the early location of [~~crippled~~] children with a disability, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn child will not be used for screening, but rather will be utilized only when there are medical or genetic indications that warrant diagnosis;

(b) the provision for [~~such~~] children described in Subsection (3)(a) of preventive, diagnosis, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of [~~such~~] those children or toward the restoration of the children to maximum physical and mental health;

(c) the development, strengthening, and improvement of standards and techniques relating to [~~such~~] services and care described in this Subsection (3);

(d) the training of personnel engaged in the provision, development, strengthening, or improvement of [~~such~~] services and care described in this Subsection (3); and

(e) necessary administrative services connected with Subsections [~~(2)~~] (3)(a), (b), and (c).

Section 2. Section 26-10-2 is amended to read:

26-10-2. Maternal and child health provided by department.

The department shall, as funding permits, provide for maternal and child health service and [~~crippled children's~~] services [~~to individuals who need such services and~~] for children with a disability if the individual needs the services and the individual cannot reasonably obtain [~~them~~] the services from other sources.

Section 3. Section 26-10-9 is enacted to read:

26-10-9. Immunizations -- Consent of minor to treatment.

(1) This section:

(a) is not intended to interfere with the integrity of the family or to minimize the rights of parents or children; and

(b) applies to a minor, who at the time care is sought is:

(i) married or has been married;

(ii) emancipated as provided for in Section 78A-6-805;

(iii) a parent with custody of a minor child; or

(iv) pregnant.

(2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:

(i) immunizations against epidemic infections and communicable diseases as defined in Section 26-6-2; and

(ii) examinations and immunizations required to attend school as provided in Title 53A, Chapter 11, Students in Public Schools.

(b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the immunizations described in Subsections (2)(a)(i) and (ii), and the vaccine for human papillomavirus only if:

(i) the minor represents to the health care provider that the minor is an abandoned minor as defined in Section 76-5-109; and

(ii) the health care provider makes a notation in the minor's chart that the minor represented to the health care provider that the minor is an abandoned minor under Section 76-5-109.

(c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a minor.

(3) The consent of the minor pursuant to this section:

(a) is not subject to later disaffirmance because of the minority of the person receiving the medical services;

(b) is not voidable because of minority at the time the medical services were provided;

(c) has the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as consent given by a person of full age and capacity; and

(d) does not require the consent of any other person or persons to authorize the medical services described in Subsections (2)(a) and (b).

(4) A health care provider who provides medical services to a minor in accordance with the provisions of this section is not subject to civil or criminal liability for providing the services described in Subsections (2)(a) and (b) without obtaining the consent of another person prior to rendering the medical services.

(5) This section does not remove the requirement for parental consent or notice when required by Section 76-7-304 or 76-7-304.5.

(6) The parents, parent, or legal guardian of a minor who receives medical services pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless the parents, parent, or legal guardian consented to the medical services.

CHAPTER 148
H. B. 18
Passed February 18, 2011
Approved March 22, 2011
Effective May 10, 2011

HEALTH REFORM - COST CONTAINMENT

Chief Sponsor: Bradley M. Daw
Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends the Utah State Retirement and Insurance Benefit Act.

Highlighted Provisions:

This bill:

- requires a consumer directed health plan offered by the Utah State Retirement and Insurance Benefit Act to promote appropriate utilization of health care, including preventive health care services;
- requires the office to prepare online training for employees regarding high deductible health plans and health savings accounts;
- requires state employers to require state employees to attend training regarding health benefit plans offered to employees, including high deductible health plans;
- provides flexibility for the state, within federal requirements, to determine the appropriate actuarial value of the consumer directed health plans; and
- requires a state employee hired after July 1, 2011, to be enrolled in a high deductible health plan unless the employee chooses to enroll in a different health benefit plan.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-20-410, as last amended by Laws of Utah 2007, Chapter 130

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

Section 1. Section 49-20-410 is amended to read:

49-20-410. High deductible health plan -- Health savings account -- Contributions.

(1) (a) In addition to other employee benefit plans offered under [~~this part~~] Subsection 49-20-201(1), the office shall offer [~~a~~] at least one federally qualified high deductible health plan with a [~~federally qualified~~] health savings account as an optional health plan.

(b) The provisions and limitations of the plan shall be:

(i) determined by the office in accordance with federal requirements and limitations[~~.~~]; and

(ii) designed to promote appropriate health care utilization by consumers, including preventive health care services.

(c) A state employee hired on or after July 1, 2011, who is offered a plan under Subsection 49-20-202(1)(a), shall be enrolled in a federally qualified high deductible health plan unless the employee chooses a different health benefit plan during the employee's open enrollment period.

(2) [~~(a)~~] The office shall:

(a) administer the high deductible health plan in coordination with [~~the~~] a health savings account [~~so that the impact on the covered employer's overall health plan is actuarially neutral. (b) The office shall offer the federally qualified health savings account~~] for medical expenses for each covered individual in the high deductible health plan[~~.~~]; and

(b) offer to all employees training regarding health plans offered to employees, including, if offered, high deductible health plans and health savings accounts; and

(c) prepare online training as an option for the training required by Subsections (2)(b) and (4).

(3) (a) Contributions to the health savings account may be made by the employer.

(b) The amount of the contributions under Subsection (3)(a) shall be determined annually by the office, after consultation with the [~~covered employer, or on behalf of the state as an employer, the~~] Department of Human Resource Management and the Governor's Office of Planning and Budget[~~, based on:~~].

[~~(i) federal requirements and limitations; and~~]

[~~(ii) the actuarial value of the risk-adjusted high deductible to the office.~~]

(c) An employee may also make contributions to the health savings account.

(4) (a) An employer participating in a plan offered under Subsection 49-20-202(1)(a) shall require each employee to complete training on the health plan options available to the employee.

(b) The training required by Subsection (4)(a):

(i) may be completed online; and

(ii) shall be completed:

(A) before the end of the 2011 open enrollment period for current enrollees in the program; and

(B) for employees hired on or after July 1, 2011, prior to the employee's selection of a plan in the program.

CHAPTER 149
H. B. 25
Passed February 4, 2011
Approved March 22, 2011
Effective May 10, 2011

MINERAL AND PETROLEUM LITERACY

Chief Sponsor: Jack R. Draxler
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill allows the use of funds from the Oil and Gas Conservation Account to be used for educational programs concerning mineral and petroleum resources and industries.

Highlighted Provisions:

This bill:

- allows the use of funds from the Oil and Gas Conservation Account to be used for educational programs concerning mineral and petroleum resources and industries;
- provides that the funds appropriated for educational programs are nonlapsing; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-6-14.5, as last amended by Laws of Utah 2009, Chapter 183

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

Section 1. Section 40-6-14.5 is amended to read:

40-6-14.5. Oil and Gas Conservation Account created -- Contents -- Use of account money.

(1) There is created within the General Fund a restricted account known as the Oil and Gas Conservation Account.

(2) The contents of the account shall consist of:

(a) revenues from the fee levied under Section 40-6-14, including any penalties or interest charged for delinquent payments; and

(b) interest and earnings on account [~~monies~~] money.

(3) Account [~~monies~~] money shall be used to pay for [~~the~~]:

(a) the administration of this chapter; [~~and~~]

(b) the plugging and reclamation of abandoned oil or gas wells or bore, core, or exploratory holes for which:

(i) there is no reclamation surety; or

(ii) the forfeited surety is insufficient for plugging and reclamation[~~.~~]; and

(c) public educational programs designed to increase knowledge of mineral and petroleum resources and industries.

(4) Priority in the use of the [~~monies~~] money shall be given to paying for the administration of this chapter.

(5) Appropriations [~~for plugging and reclamation of abandoned oil or gas wells or bore, core, or exploratory holes shall be~~] made in accordance with Subsections (3)(b) and (c) are nonlapsing.

(6) (a) The balance of the Oil and Gas Conservation Account at the end of a fiscal year may not exceed $750,000.

(b) Any excess [~~monies~~] money at the end of the fiscal year above $750,000 shall be transferred to the General Fund.

[~~(7) (a) As used in this Subsection (7), "excess fee revenue" means revenue collected in fiscal year 1999-2000 from the fee levied under Section 40-6-14 that exceeds the fee revenue appropriated to the Division of Oil, Gas, and Mining in fiscal year 1999-2000.~~]

[~~(b) If there is a General Fund surplus for fiscal year 1999-2000, the Division of Finance shall transfer General Fund surplus monies to the Oil and Gas Conservation Account in an amount up to the excess fee revenue.~~]

[~~(c) The transfer provided in Subsection (7)(b) shall be made after General Fund surplus monies are transferred to the General Fund Budget Reserve Account pursuant to Section 63J-1-312.~~]

CHAPTER 150
H. B. 68
Passed March 2, 2011
Approved March 22, 2011
Effective May 10, 2011

OFF-HIGHWAY VEHICLE OPERATOR RESPONSIBILITIES

Chief Sponsor: Michael E. Noel
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies the Off-Highway Vehicles Code by enacting provisions relating to off-highway vehicle operator responsibilities.

Highlighted Provisions:

This bill:

- provides that an off-highway vehicle operator who is 18 years of age or older shall accept legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of off-highway vehicle use;
- requires an operator of an off-highway vehicle to regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of off-highway vehicle operation is avoided;
- provides that an off-highway vehicle operator is responsible for:
  - knowing the range of the operator's ability to navigate any slope, trail, or area for off-highway vehicle use, taking into consideration the conditions;
  - maintaining control of speed and course at all times while operating the off-highway vehicle;
  - heeding all posted warnings; and
  - refraining from acting in a manner that may cause or contribute to the injury of anyone;
- provides that these provisions do not affect certain products liability causes of action;
- provides that these provisions do not affect a passenger's cause of action or ability to recover for injuries; and
- provides that these provisions do not affect an off-highway vehicle owner's liability for negligent entrustment.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
41-22-37, Utah Code Annotated 1953

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

Section 1. Section 41-22-37 is enacted to read:

41-22-37. Off-highway vehicle operator responsibilities.

(1) An off-highway vehicle operator who is 18 years of age or older shall accept legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of off-highway vehicle use.

(2) (a) An off-highway vehicle operator shall regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of off-highway vehicle operation is avoided.

(b) Risks inherent in the sport of off-highway vehicle operation under Subsection (1) include:

(i) variations in terrain;

(ii) surface or subsurface conditions;

(iii) crevices;

(iv) ravines;

(v) streams;

(vi) poor visibility;

(vii) rocks;

(viii) trees;

(ix) other forms of forest growth or debris; and

(x) any other natural hazard.

(3) An off-highway vehicle operator is responsible for:

(a) knowing the range of the operator's ability to navigate any slope, trail, or area for off-highway vehicle use, taking into consideration the conditions;

(b) maintaining control of speed and course at all times while operating the off-highway vehicle;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of any person.

(4) The provisions of this section do not affect a product liability cause of action based upon proper warning, design, or manufacture of off-highway equipment or products or safety equipment used incidental to the operation of an off-highway vehicle.

(5) The provisions of this section do not affect a passenger's cause of action or ability to recover for injuries.

(6) The provisions of this section do not affect an off-highway vehicle owner's liability for negligent entrustment.

CHAPTER 151
H. B. 84
Passed March 10, 2011
Approved March 22, 2011
Effective July 1, 2011

OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES

Chief Sponsor: David Clark
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill creates, within the Governor's Office of Planning and Budget, the Office of Inspector General of Medicaid Services.

Highlighted Provisions:

This bill:

- defines terms;
- creates, within the Governor's Office of Planning and Budget, the Office of Inspector General of Medicaid Services (office);
- describes and provides for the qualifications, appointment, term of office, and removal of the Inspector General of Medicaid Services (inspector general);
- describes the duties and powers of the inspector general and the office;
- requires the inspector general to enter into a memorandum of understanding with the Medicaid Fraud Control Unit of the attorney general's office (fraud unit);
- requires the office to annually select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred;
- provides for the transfer of full-time equivalents from the Department of Health to the Governor's Office of Planning and Budget to staff the office;
- establishes a process where the inspector general can order a hold on the payment of a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate;
- grants the office full access to records and employees when investigating or auditing the use or expenditure of Medicaid funds or the provision of services;
- grants the office access to the Controlled Substance Database and to all records, information, and databases that the Department of Health and the Division of Health Care Financing have access to;
- requires the Department of Health, the Division of Health Care Financing, and others to fully cooperate with and support the inspector general and the office in fulfilling the duties of the inspector general and the office;
- prohibits a person from interfering with or impeding an investigation or audit of the office or fraud unit and from interfering with the content or conclusion of a report;
- grants subpoena power to the inspector general;
- requires a health care professional, a Medicaid provider, and a state or local government official or employee to report any Medicaid fraud, waste, or abuse of which they become aware;
- requires the inspector general to, on an annual basis, prepare a written report on the activities of the office for the preceding fiscal year, to provide the report to the governor, and to provide and present the report to the Executive Appropriations Committee of the Legislature;
- requires the provision of contract services to the office by the attorney general's office and the Division of Health Care Financing;
- classifies certain records relating to an investigation or audit by the office as protected;
- grants rulemaking authority to the office; and
- makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates, as ongoing appropriations:

- to Department of Health – Executive Director's Operations:
  - from the General Fund, $(694,900);
  - from the Federal Fund, $(1,037,000); and
  - from Revenue Transfers – Within Agency, $(81,500);
- to Medicaid Mandatory Services:
  - from the General Fund, $(300,000); and
  - from the Federal Fund, $(519,100); and
- to Office of Inspector General of Medicaid Services:
  - from the General Fund, $994,900;
  - from the Federal Fund, $1,556,100; and
  - from Revenue Transfers – Health, $81,500.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

26-18-2.3, as last amended by Laws of Utah 2010, Chapter 149
26-18-3, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
58-37f-301, as enacted by Laws of Utah 2010, Chapter 287 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 312
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
63I-2-263, as last amended by Laws of Utah 2010, Chapter 224
63J-4-202, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

63J-4a-101, Utah Code Annotated 1953
63J-4a-102, Utah Code Annotated 1953
63J-4a-201, Utah Code Annotated 1953
63J-4a-202, Utah Code Annotated 1953
63J-4a-203, Utah Code Annotated 1953
63J-4a-204, Utah Code Annotated 1953
63J-4a-205, Utah Code Annotated 1953
63J-4a-206, Utah Code Annotated 1953
63J-4a-207, Utah Code Annotated 1953
63J-4a-301, Utah Code Annotated 1953
63J-4a-302, Utah Code Annotated 1953
63J-4a-303, Utah Code Annotated 1953
63J-4a-304, Utah Code Annotated 1953
63J-4a-401, Utah Code Annotated 1953
63J-4a-501, Utah Code Annotated 1953

63J-4a-502, Utah Code Annotated 1953
63J-4a-601, Utah Code Annotated 1953
63J-4a-602, Utah Code Annotated 1953

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

Section 1. Section 26-18-2.3 is amended to read:

26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.

(1) In accordance with the requirements of Title XIX of the Social Security Act and applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall:

(a) establish, on a statewide basis, a program to safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay;

(b) deny any provider claim for services that fail to meet criteria established by the division concerning medical necessity or appropriateness; and

(c) place its emphasis on high quality care to recipients in the most economical and cost-effective manner possible, with regard to both publicly and privately provided services.

(2) The division shall implement and utilize cost-containment methods, where possible, which may include:

(a) prepayment and postpayment review systems to determine if utilization is reasonable and necessary;

(b) preadmission certification of nonemergency admissions;

(c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

(d) second surgical opinions;

(e) procedures for encouraging the use of outpatient services;

(f) consistent with Sections 26-18-2.4 and 58-17b-606, a Medicaid drug program;

(g) coordination of benefits; and

(h) review and exclusion of providers who are not cost effective or who have abused the Medicaid program, in accordance with the procedures and provisions of federal law and regulation.

(3) The director of the division shall periodically assess the cost effectiveness and health implications of the existing Medicaid program, and consider alternative approaches to the provision of covered health and medical services through the Medicaid program, in order to reduce unnecessary or unreasonable utilization.

(4) The department shall ensure Medicaid program integrity by conducting internal audits of the Medicaid program for efficiencies, best practices, fraud, waste, abuse, and cost recovery[~~, at least in proportion to the percent of funding for the program that comes from state funds~~].

(5) The department shall, by December 31 of each year, report to the Health and Human Services Appropriations Subcommittee regarding:

(a) measures taken under this section to increase:

(i) efficiencies within the program; and

(ii) cost avoidance and cost recovery efforts in the program; and

(b) results of program integrity efforts under Subsection (4).

Section 2. Section 26-18-3 is amended to read:

26-18-3. Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Studies -- Health opportunity accounts.

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:

(i) the standards used by the department for determining eligibility for Medicaid services;

(ii) the services and benefits to be covered by the Medicaid program; and

(iii) reimbursement methodologies for providers under the Medicaid program.

(3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health and Human Services Appropriations Subcommittee when the department:

(i) implements a change in the Medicaid State Plan;

(ii) initiates a new Medicaid waiver;

(iii) initiates an amendment to an existing Medicaid waiver;

(iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or

(v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Health and Human Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) (a) The Department of Human Services shall report to the Legislative Health and Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance with Subsection (4)(b).

(b) The report required by Subsection (4)(a) shall include:

(i) changes made by the division or the department beginning July 1, 2010 that effect the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid services or funding, that relate to care for children and youth in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services;

(ii) the history and impact of the changes under Subsection (4)(b)(i);

(iii) the Department of Human Service's plans for addressing the impact of the changes under Subsection (4)(b)(i); and

(iv) ways to consolidate administrative functions within the Department of Human Services, the Department of Health, the Division of Child and Family Services, and the Division of Juvenile Justice Services to more efficiently meet the needs of children and youth with mental health and substance disorder treatment needs.

(5) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.

(6) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:

(a) the determination of the eligibility of individuals for the program;

(b) recovery of overpayments; and

(c) consistent with Section 26-20-13, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.

(7) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

(c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

(9) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (9)(a) may be applied:

(i) the federal government must:

(A) determine that Subsection (9)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department must determine that Subsection (9)(a) can be implemented within existing funding.

(10) (a) For purposes of this Subsection (10):

(i) "aged, blind, or disabled" shall be defined by administrative rule; and

(ii) "spend down" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or disabled is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(11) The department shall conduct internal audits of the Medicaid program[~~, in proportion to at least the level of funding it receives from Medicaid to conduct internal audits~~].

(12) In order to determine the feasibility of contracting for direct Medicaid providers for primary care services, the department shall:

(a) issue a request for information for direct contracting for primary services that shall provide that a provider shall exclusively serve all Medicaid clients:

(i) in a geographic area;

(ii) for a defined range of primary care services; and

(iii) for a predetermined total contracted amount; and

(b) by February 1, 2011, report to the Health and Human Services Appropriations Subcommittee on the response to the request for information under Subsection (12)(a).

(13) (a) By December 31, 2010, the department shall:

(i) determine the feasibility of implementing a three year patient-centered medical home demonstration project in an area of the state using existing budget funds; and

(ii) report the department's findings and recommendations under Subsection (13)(a)(i) to the Health and Human Services Appropriations Subcommittee.

(b) If the department determines that the medical home demonstration project described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations Subcommittee recommends that the demonstration project be implemented, the department shall:

(i) implement the demonstration project; and

(ii) by December 1, 2012, make recommendations to the Health and Human Services Appropriations Subcommittee regarding the:

(A) continuation of the demonstration project;

(B) expansion of the demonstration project to other areas of the state; and

(C) cost savings incurred by the implementation of the demonstration project.

(14) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (14)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

Section 3. Section 58-37f-301 is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies; or

(ii) when the information is requested by the Department of Health in relation to a person whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(3)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances; or

(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

(h) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(h), from the database; [~~and~~]

(i) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made[~~.~~]; and

(j) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63J, Chapter 4a, Part 2, Office Duties and Powers.

(3) (a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (2)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (2)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(4) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

Section 4. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the

value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required

pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; [~~and~~]

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality[~~.~~];

(61) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

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

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

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

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit; and

(62) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse.

Section 5. Section 63I-2-263 is amended to read:

63I-2-263. Repeal dates, Title 63A to Title 63M.

(1) Subsection 63G-1-401(5) is repealed on May 10, 2011.

(2) Sections 63J-4a-206 and 63J-4a-207 are repealed on December 31, 2011.

Section 6. Section 63J-4-202 is amended to read:

63J-4-202. Appointment of director, state planning coordinator, and inspector general of Medicaid Services.

(1) (a) The governor shall appoint, to serve at the governor's pleasure:

(i) a director of the Governor's Office of Planning and Budget; and

(ii) a state planning coordinator.

(b) The state planning coordinator is considered part of the office for purposes of administration.

(2) The governor shall establish the director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(3) (a) In accordance with Section 63J-4a-201, the governor shall appoint, with the advice and consent of the Senate, the inspector general of the Office of Inspector General of Medicaid Services.

(b) The Office of Inspector General of Medicaid Services is considered part of the office for purposes of administration.

Section 7. Section 63J-4a-101 is enacted to read:

CHAPTER 4a. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES

Part 1. General Provisions

63J-4a-101. Title.

This chapter is known as "Office of Inspector General of Medicaid Services."

Section 8. Section 63J-4a-102 is enacted to read:

63J-4a-102. Definitions.

As used in this chapter:

(1) "Abuse" means:

(a) an action or practice that:

(i) is inconsistent with sound fiscal, business, or medical practices; and

(ii) results, or may result, in unnecessary Medicaid related costs; or

(b) reckless or negligent upcoding.

(2) "Claimant" means a person that:

(a) provides a service; and

(b) submits a claim for Medicaid reimbursement for the service.

(3) "Department" means the Department of Health, created in Section 26-1-4.

(4) "Division" means the Division of Health Care Financing, created in Section 26-18-2.1.

(5) "Fraud" means intentional or knowing:

(a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a claim, reimbursement, or services; or

(b) a violation of a provision of Subsections 26-20-3 through 26-20-7.

(6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's office.

(7) "Health care professional" means a person licensed under:

(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) Title 58, Chapter 31b, Nurse Practice Act;

(f) Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;

(h) Title 58, Chapter 42a, Occupational Therapy Practice Act;

(i) Title 58, Chapter 44a, Nurse Midwife Practice Act;

(j) Title 58, Chapter 49, Dietitian Certification Act;

(k) Title 58, Chapter 60, Mental Health Professional Practice Act;

(l) Title 58, Chapter 67, Utah Medical Practice Act;

(m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

(o) Title 58, Chapter 70a, Physician Assistant Act; and

(p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

(8) "Inspector general" means the inspector general of the office, appointed under Section 63J-4a-201.

(9) "Office" means the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201.

(10) "Provider" means a person that provides:

(a) medical assistance, including supplies or services, in exchange, directly or indirectly, for Medicaid funds; or

(b) billing or recordkeeping services relating to Medicaid funds.

(11) "Upcoding" means assigning an inaccurate billing code for a service that is payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking into account reasonable opinions derived from official published coding definitions, would result in a lower Medicaid payment or reimbursement.

(12) "Waste" means overutilization of resources or inappropriate payment.

Section 9. Section 63J-4a-201 is enacted to read:

Part 2. Office Duties and Powers

63J-4a-201. Creation of office -- Inspector general -- Appointment -- Term.

(1) There is created, within the Governor's Office of Planning and Budget, the Office of Inspector General of Medicaid Services.

(2) The governor shall appoint the inspector general, with the advice and consent of the Senate.

(3) A person appointed as the inspector general shall:

(a) be a certified public accountant or a certified internal auditor; and

(b) have the following qualifications:

(i) a general knowledge of the type of methodology and controls necessary to audit, investigate, and identify fraud, waste, and abuse;

(ii) strong management skills;

(iii) extensive knowledge of, and at least seven years experience with, performance audit methodology;

(iv) the ability to oversee and execute an audit; and

(v) strong interpersonal skills.

(4) The inspector general:

(a) shall serve a term of two years; and

(b) may be removed by the governor, for cause.

(5) If the inspector general is removed for cause, a new inspector general shall be appointed, with the advice and consent of the Senate, to serve a two-year term.

Section 10. Section 63J-4a-202 is enacted to read:

63J-4a-202. Duties and powers of inspector general and office.

(1) The inspector general shall:

(a) administer, direct, and manage the office;

(b) inspect and monitor the following in relation to the state Medicaid program:

(i) the use and expenditure of federal and state funds;

(ii) the provision of health benefits and other services;

(iii) implementation of, and compliance with, state and federal requirements; and

(iv) records and recordkeeping procedures;

(c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

(d) investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program;

(e) consult with the Centers for Medicaid and Medicare Services and other states to determine and implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid funds;

(f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program;

(g) work closely with the fraud unit to identify and recover improperly or fraudulently expended Medicaid funds;

(h) audit, inspect, and evaluate the functioning of the division to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;

(i) regularly advise the department and the division of an action that should be taken to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;

(j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid program, to the fraud unit;

(k) determine ways to:

(i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program; and

(ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state Medicaid program;

(l) seek recovery of improperly paid Medicaid funds;

(m) track recovery of Medicaid funds by the state;

(n) in accordance with Section 63J-4a-501:

(i) report on the actions and findings of the inspector general; and

(ii) make recommendations to the Legislature and the governor;

(o) provide training to agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; and

(p) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:

(i) the Federal Offices of Inspector General;

(ii) the Association of Inspectors General; and

(iii) the United States Government Accountability Office.

(2) The office may conduct a performance or financial audit of:

(a) a state executive branch entity or a local government entity, including an entity described in Subsection 63J-4a-301(3), that:

(i) manages or oversees a state Medicaid program; or

(ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or

(b) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.

(3) The inspector general, or a designee of the inspector general within the office, may take a sworn statement or administer an oath.

Section 11. Section 63J-4a-203 is enacted to read:

63J-4a-203. Memorandum of understanding with fraud unit.

The inspector general shall enter into a memorandum of understanding with the fraud unit to:

(1) formalize communication, cooperation, coordination of efforts, and the sharing of information, on a regular basis, between the office and the fraud unit;

(2) provide for reporting criminal activity discovered by the office to the fraud unit;

(3) ensure that investigations and other actions by the office and the fraud unit do not conflict; and

(4) provide for the sharing and classification of records between the office and the fraud unit under the Government Records Access and Management Act.

Section 12. Section 63J-4a-204 is enacted to read:

63J-4a-204. Selection and review of claims.

(1) On an annual basis, the office shall select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred.

(2) The office may directly contact the recipient of record for a Medicaid reimbursed service to

determine whether the service for which reimbursement was claimed was actually provided to the recipient of record.

(3) The office shall generate statistics from the sample described in Subsection (1) to determine the type of fraud, waste, or abuse that is most advantageous to focus on in future audits or investigations.

Section 13. Section 63J-4a-205 is enacted to read:

63J-4a-205. Placement of hold on claims for reimbursement -- Injunction.

(1) The inspector general or the inspector general's designee may, without prior notice, order a hold on the payment of a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.

(2) The office shall, within seven days after the day on which a hold described in Subsection (1) is ordered, notify the claimant that the hold has been placed.

(3) The inspector general or the inspector general's designee may not maintain a hold longer than is necessary to determine whether the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.

(4) A claimant may, at any time during which a hold is in place, appeal the hold under Title 63G, Chapter 4, Administrative Procedures Act.

(5) If a claim is approved or denied before a hearing is held under Title 63G, Chapter 4, Administrative Procedures Act, the appeal shall be dismissed as moot.

(6) The inspector general may request that the attorney general's office seek an injunction to prevent a person from disposing of an asset that is potentially subject to recovery by the state to recover funds due to a person's fraud or abuse.

(7) The department and the division shall fully comply with a hold ordered under this section.

Section 14. Section 63J-4a-206 is enacted to read:

63J-4a-206. Transfer of full-time equivalents to staff office.

The office shall be staffed by transferring from the Office of Internal Audit and Program Integrity to the office all full-time equivalents for the following positions, as they existed and were organized within the Office of Internal Audit and Program Integrity on September 28, 2010, as shown in Appendix B of the Performance Audit of Utah Medicaid Provider Cost Control, dated December 2010 and published by the Office of the Legislative Auditor General:

(1) the director of the Office of Internal Audit and Program Integrity;

(2) the executive secretary to the director of the Office of Internal Audit and Program Integrity;

(3) two positions of program manager of Program Integrity Post Payment Review;

(4) all positions under the positions described in Subsection (3), including:

(a) four RN III positions;

(b) the position of RN III that was vacant on September 28, 2010;

(c) the position of office specialist I that was vacant on September 28, 2010;

(d) doctor (0.2 FTE);

(e) two positions of doctor (0.5 FTE each);

(f) data HPS III;

(g) the position of data HPS II that was vacant on September 28, 2010;

(h) collections HPS II;

(i) PERM Lead;

(j) PERM HPS II; and

(k) PERM HPS II;

(5) the audit manager (performance audit); and

(6) all positions under the position described in Subsection (5), including:

(a) two positions of Lead Auditor;

(b) two positions of Auditor II, including the one that was vacant on September 28, 2010; and

(c) OIAS Support.

Section 15. Section 63J-4a-207 is enacted to read:

63J-4a-207. Filling of transferred positions.

The executive director of the department and the inspector general shall meet to determine which individuals, if any, who currently hold the positions represented by the full-time equivalents described in Section 63J-4a-206, will fill positions in the office. Any disagreement regarding transferring of personnel shall be resolved by the governor.

Section 16. Section 63J-4a-301 is enacted to read:

Part 3. Investigation or Audit

63J-4a-301. Access to records -- Retention of designation under Government Records Access and Management Act.

(1) In order to fulfill the duties described in Section 63J-4a-202, the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:

(a) the state Medicaid program;

(b) state or federal Medicaid funds;

(c) the provision of Medicaid related services;

(d) the regulation or management of any aspect of the state Medicaid program;

(e) the use or expenditure of state or federal Medicaid funds;

(f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;

(g) Medicaid program policies, practices, and procedures;

(h) monitoring of Medicaid services or funds; or

(i) a fatality review of a person who received Medicaid funded services.

(2) The office shall have access to information in any database maintained by the state or a local government to verify identity, income, employment status, or other factors that affect eligibility for Medicaid services.

(3) The records described in Subsections (1) and (2) include records held or maintained by the department, the division, the Department of Human Services, the Department of Workforce Services, a local health department, a local mental health authority, or a school district. The records described in Subsection (1) include records held or maintained by a provider. When conducting an audit of a provider, the office shall, to the extent possible, limit the records accessed to the scope of the audit.

(4) A record, described in Subsection (1) or (2), that is accessed or copied by the office:

(a) may be reviewed or copied by the office during normal business hours; and

(b) if it is a government record, shall retain the classification made by the entity responsible for the record, under Title 63G, Chapter 2, Government Records Access and Management Act.

(5) Notwithstanding any provision of state law to the contrary, the office shall have the same access to all records, information, and databases that the department or the division have access to.

(6) The office shall comply with the requirements of federal law, including the Health Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the confidentiality of alcohol and drug abuse records, in the office's:

(a) access, review, retention, and use of records; and

(b) use of information included in, or derived from, records.

Section 17. Section 63J-4a-302 is enacted to read:

63J-4a-302. Access to employees -- Cooperating with investigation or audit.

(1) The office shall have access to interview the following persons if the inspector general determines that the interview may assist the inspector general in fulfilling the duties described in Section 63J-4a-202:

(a) a state executive branch official, executive director, director, or employee;

(b) a local government official or employee;

(c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or

(d) a provider or an employee of a provider.

(2) A person described in Subsection (1) and each supervisor of the person shall fully cooperate with the office by:

(a) providing the office or the inspector general's designee with access to interview the person;

(b) completely and truthfully answering questions asked by the office or the inspector general's designee;

(c) providing the records, described in Subsection 63J-4a-301(1), requested by the office or the inspector general's designee; and

(d) providing the office or the inspector general's designee with information relating to the office's investigation or audit.

(3) A person described in Subsection (1)(a) or (b) and each supervisor of the person shall fully cooperate with the office by:

(a) providing records requested by the office or the inspector general's designee; and

(b) providing the office or the inspector general's designee with information relating to the office's investigation or audit, including information that is classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 18. Section 63J-4a-303 is enacted to read:

63J-4a-303. Cooperation and support.

The department, the division, each consultant or contractor of the department or division, and each provider shall provide its full cooperation and support to the inspector general and the office in fulfilling the duties of the inspector general and the office.

Section 19. Section 63J-4a-304 is enacted to read:

63J-4a-304. Interference with an investigation or audit prohibited.

No person may:

(1) interfere with or impede an investigation or audit of the office or fraud unit; or

(2) interfere with the office relative to the content of a report, the conclusions reached in a report, or the manner of disclosing the results and findings of the office.

Section 20. Section 63J-4a-401 is enacted to read:

Part 4. Subpoena Power

63J-4a-401. Subpoena power -- Enforcement.

(1) The inspector general has the power to issue a subpoena to obtain a record or interview a person that the office or inspector general has the right to access under Part 3, Investigation or Audit.

(2) A person who fails to comply with a subpoena issued by the inspector general or who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

(a) is in contempt of the inspector general; and

(b) upon request by the inspector general, the attorney general shall:

(i) file a motion for an order to compel obedience to the subpoena with the district court;

(ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the inspector general; or

(iii) pursue other legal remedies against the person.

(3) Upon receipt of a motion under Subsection (2), the court:

(a) shall expedite the hearing and decision on the motion; and

(b) may:

(i) order the person named in the subpoena to comply with the subpoena; and

(ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the inspector general.

(4) (a) If a subpoena described in this section requires the production of accounts, books, papers, documents, or other tangible items, the person or entity to whom it is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

(b) The inspector general may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (3).

(c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.

(5) Nothing in this section prevents the inspector general from seeking an extraordinary writ to remedy contempt of the inspector general.

(6) Any party aggrieved by a decision of a court under this section may appeal that decision directly to the Utah Supreme Court.

Section 21. Section 63J-4a-501 is enacted to read:

Part 5. Reporting

63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.

(1) A health care professional, a provider, or a state or local government official or employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.

(2) A person who makes a report under Subsection (1) may request that the person's name not be released in connection with the investigation.

(3) If a request is made under Subsection (2), the person's identity may not be released to any person or entity other than the office, the fraud unit, or law enforcement, unless a court of competent jurisdiction orders that the person's identity be released.

Section 22. Section 63J-4a-502 is enacted to read:

63J-4a-502. Report and recommendations to governor and Executive Appropriations Committee.

(1) The inspector general shall, on an annual basis, prepare a written report on the activities of the office for the preceding fiscal year.

(2) The report shall include:

(a) non-identifying information, including statistical information, on:

(i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;

(ii) action taken by the office and the result of that action;

(iii) fraud, waste, and abuse in the state Medicaid program;

(iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

(v) measures taken by the state to discover and reduce fraud, waste, and abuse in the state Medicaid program;

(vi) audits conducted by the office; and

(vii) investigations conducted by the office and the results of those investigations;

(b) recommendations on action that should be taken by the Legislature or the governor to:

(i) improve the discovery and reduction of fraud, waste, and abuse in the state Medicaid program;

(ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

(iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

(c) recommendations relating to rules, policies, or procedures of a state or local government entity; and

(d) services provided by the state Medicaid program that exceed industry standards.

(3) The report described in Subsection (1) may not include any information that would interfere with or jeopardize an ongoing criminal investigation or other investigation.

(4) The inspector general shall provide the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature and to the governor on or before October 1 of each year.

(5) The inspector general shall present the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature before November 30 of each year.

Section 23. Section 63J-4a-601 is enacted to read:

Part 6. Miscellaneous Provisions

63J-4a-601. Provision of contract services to Office of Inspector General of Medicaid Services.

(1) The division and the assistant attorneys general assigned to the division shall provide, without charge, contract review, contract enforcement, and other contract management services to the office.

(2) The division shall ensure that the services described in Subsection (1) are provided in an expeditious manner.

(3) The attorney general shall designate one of the assistant attorneys general assigned to the division to give first priority to providing the services described in Subsection (1) to the office.

(4) The office and the division shall enter into a memorandum of understanding in order to execute the requirements of this section in an effective and efficient manner.

Section 24. Section 63J-4a-602 is enacted to read:

63J-4a-602. Rulemaking authority.

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish policies, procedures, and practices, in accordance with the provisions of this chapter, relating to:

(1) inspecting and monitoring the state Medicaid Program;

(2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid program;

(3) developing and implementing the principles and standards described in Subsection 63J-4a-202(1)(p);

(4) auditing, inspecting, and evaluating the functioning of the division under Subsection 63J-4a-202(1)(h);

(5) conducting an audit under Subsection 63J-4a-202(1)(h) or (2); or

(6) ordering a hold on the payment of a claim for reimbursement under Section 63J-4a-205.

Section 25. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

Item 1 To Department of Health – Executive Director's Operations

From General Fund	$(694,900)
From Federal Fund	$(1,037,000)
From Revenue Transfers – Within Agency	$(81,500)
Schedule of Programs	
Internal Audit and Program Integrity	$(1,813,400)

Item 2 To Medicaid Mandatory Services

From General Fund	$(300,000)
From Federal Fund	$(519,100)
Schedule of Programs:	
Other Mandatory Services	$(819,100)

Item 3 To Office of Inspector General of Medicaid Services

From General Fund	$994,900
From Federal Fund	$1,556,100
From Revenue Transfers – Health	$81,500
Schedule of Programs:	
Office of Inspector General of Medicaid Services	$2,632,500

Section 26. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 152
H. B. 86
Passed March 7, 2011
Approved March 22, 2011
Effective July 1, 2011

VETERAN'S IDENTIFICATION ON DRIVER LICENSE OR IDENTIFICATION CARD

Chief Sponsor: Gregory H. Hughes
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies the Uniform Driver License Act by amending provisions relating to driver licenses issued to military veterans.

Highlighted Provisions:

This bill:

- provides that every regular license certificate, limited-term license certificate, regular identification card, or limited-term identification card issued on or after July 1, 2011, shall bear an indication that the person is a military veteran if:
  - the person states that the person is a military veteran on the application for a driver license or identification card and provides verification that the person was honorably discharged from the United States military; and
  - for a regular or limited-term license certificate, the license certificate is issued to a person who is 21 years of age or older; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

53-3-104, as last amended by Laws of Utah 2009, Chapters 89 and 315
53-3-205, as last amended by Laws of Utah 2010, Chapter 95
53-3-207 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapter 276
53-3-804, as last amended by Laws of Utah 2009, Chapter 315
53-3-805, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 53-3-104 is amended to read:

53-3-104. Division duties.

The division shall:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

(a) for examining applicants for a license, as necessary for the safety and welfare of the traveling public;

(b) for acceptable documentation of an applicant's identity, Social Security number, Utah resident status, Utah residence address, proof of legal presence, proof of citizenship in the United States, honorable discharge from the United States military, and other proof or documentation required under this chapter;

(c) regarding the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit or learner permit;

(d) for exemptions from licensing requirements as authorized in this chapter; and

(e) establishing procedures for the storage and maintenance of applicant information provided in accordance with Section 53-3-205, 53-3-410, or 53-3-804;

(2) examine each applicant according to the class of license applied for;

(3) license motor vehicle drivers;

(4) file every application for a license received by it and shall maintain indices containing:

(a) all applications denied and the reason each was denied;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended, disqualified, or revoked by the division and the reasons for the action;

(5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with this chapter;

(6) file all accident reports and abstracts of court records of convictions received by it under state law;

(7) maintain a record of each licensee showing the licensee's convictions and the traffic accidents in which the licensee has been involved where a conviction has resulted;

(8) consider the record of a licensee upon an application for renewal of a license and at other appropriate times;

(9) search the license files, compile, and furnish a report on the driving record of any person licensed in the state in accordance with Section 53-3-109;

(10) develop and implement a record system as required by Section 41-6a-604;

(11) in accordance with Section 53A-13-208, establish:

(a) procedures and standards to certify teachers of driver education classes to administer knowledge and skills tests;

(b) minimal standards for the tests; and

(c) procedures to enable school districts to administer or process any tests for students to receive a class D operator's license;

(12) in accordance with Section 53-3-510, establish:

(a) procedures and standards to certify licensed instructors of commercial driver training school courses to administer the skills test;

(b) minimal standards for the test; and

(c) procedures to enable licensed commercial driver training schools to administer or process skills tests for students to receive a class D operator's license;

(13) provide administrative support to the Driver License Medical Advisory Board created in Section 53-3-303; and

(14) upon request by the lieutenant governor, provide the lieutenant governor with a digital copy of the driver license or identification card signature of a person who is an applicant for voter registration under Section 20A-2-206.

Section 2. Section 53-3-205 is amended to read:

53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.

(1) An application for any original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six months of the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application and fees for a commercial class A, B, or C license entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the knowledge test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(6) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(7) (a) Except as provided under Subsections (7)(f), (g), and (h), an original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) Except as provided under Subsections (7)(f), (g), and (h), a renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f) and (g), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) A regular license certificate and any endorsement to the regular license certificate held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States or by an immediate family member or dependent who is residing outside of the state, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person's orders have been terminated or the person has been discharged, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(f) A limited-term license certificate or a renewal to a limited-term license certificate expires:

(i) on the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided under this Subsection (7), whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term license certificate was issued if there is no definite end to the individual's period of authorized stay.

(g) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was issued or renewed.

(h) An original license or a renewal to an original license expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, each applicant shall:

(i) provide the applicant's:

(A) full legal name;

(B) birth date;

(C) gender;

(D) (I) documentary evidence of the applicant's valid Social Security number;

(II) written proof that the applicant is ineligible to receive a Social Security number;

(III) temporary identification number (ITIN) issued by the Internal Revenue Service for a person who:

(Aa) does not qualify for a Social Security number; and

(Bb) is applying for a driving privilege card; or

(IV) other documentary evidence approved by the division; and

(E) Utah residence address as documented by a form or forms acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b);

(ii) provide evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(A) that a person is:

(I) a United States citizen;

(II) a national; or

(III) a legal permanent resident alien; or

(B) of the applicant's:

(I) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(II) pending or approved application for asylum in the United States;

(III) admission into the United States as a refugee;

(IV) pending or approved application for temporary protected status in the United States;

(V) approved deferred action status; or

(VI) pending application for adjustment of status to legal permanent resident or conditional resident;

(iii) provide a description of the applicant;

(iv) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(v) state whether the applicant has ever had any license suspended, cancelled, revoked, disqualified, or denied in the last 10 years, or whether the applicant has ever had any license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(vi) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);

(vii) state whether the applicant is required to register as a sex offender under Section 77-27-21.5;

(viii) state whether the applicant is a [~~military~~] veteran of the United States military, provide verification that the applicant was honorably discharged from the United States military, and state whether the applicant does or does not authorize sharing the information with the state Department of Veterans' Affairs;

(ix) provide all other information the division requires; and

(x) sign the application which signature may include an electronic signature as defined in Section 46-4-102.

(b) Each applicant shall have a Utah residence address, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b).

(c) Each applicant shall provide evidence of lawful presence in the United States in accordance with Subsection (8)(a)(ii), unless the application is for a driving privilege card.

(d) The division shall maintain on its computerized records an applicant's:

(i) (A) Social Security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(D)(IV) applies; and

(ii) indication whether the applicant is required to register as a sex offender under Section 77-27-21.5.

(9) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(10) (a) Except as provided in Subsection (10)(b), when an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled.

(b) A disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.

(11) (a) When an application is received from a person previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3-105.

(13) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) The indication of intent under Subsection (8)(a)(vi) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all persons who under Subsection (8)(a)(vi) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans' Affairs the names and addresses of all persons who indicate their status as a veteran under Subsection (8)(a)(viii).

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(vi) or(viii), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

(18) A person who knowingly fails to provide the information required under Subsection (8)(a)(vii) is guilty of a class A misdemeanor.

Section 3. Section 53-3-207 (Effective 07/01/11) is amended to read:

53-3-207 (Effective 07/01/11). License certificates or driving privilege cards issued to drivers by class of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.

(1) As used in this section:

(a) "driving privilege" means the privilege granted under this chapter to drive a motor vehicle;

(b) "governmental entity" means the state and its political subdivisions as defined in this Subsection (1);

(c) "political subdivision" means any county, city, town, school district, public transit district, community development and renewal agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation; and

(d) "state" means this state, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, children's justice center, or other instrumentality of the state.

(2) (a) The division shall issue to every person privileged to drive a motor vehicle, a regular license certificate, a limited-term license certificate, or a driving privilege card indicating the type or class of motor vehicle the person may drive.

(b) A person may not drive a class of motor vehicle unless granted the privilege in that class.

(3) (a) Every regular license certificate, limited-term license certificate, or driving privilege card shall bear:

(i) the distinguishing number assigned to the person by the division;

(ii) the name, birth date, and Utah residence address of the person;

(iii) a brief description of the person for the purpose of identification;

(iv) any restrictions imposed on the license under Section 53-3-208;

(v) a photograph of the person;

(vi) a photograph or other facsimile of the person's signature; [~~and~~]

(vii) an indication whether the person intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended under Subsection 53-3-214(3)[~~.~~]; and

(viii) except as provided in Subsection (3)(b), if the person states that the person is a veteran of the United States military on the application for a

driver license in accordance with Section 53-3-205 and provides verification that the person was honorably discharged from the United States military, an indication that the person is a United States military veteran for a regular license certificate or limited-term license certificate issued on or after July 1, 2011.

(b) A regular license certificate or limited-term license certificate issued to any person younger than 21 years on a portrait-style format as required in Subsection (5)(b)(i) is not required to include an indication that the person is a United States military veteran under Subsection (3)(a)(viii).

[~~(b)~~] (c) A new license certificate issued by the division may not bear the person's Social Security number.

[~~(c)~~] (d) (i) The regular license certificate, limited-term license certificate, or driving privilege card shall be of an impervious material, resistant to wear, damage, and alteration.

(ii) Except as provided under Subsection (4)(b), the size, form, and color of the regular license certificate, limited-term license certificate, or driving privilege card shall be as prescribed by the commissioner.

(iii) The commissioner may also prescribe the issuance of a special type of limited regular license certificate, limited-term license certificate, or driving privilege card under Subsection 53-3-220(4).

(4) (a) (i) The division, upon determining after an examination that an applicant is mentally and physically qualified to be granted a driving privilege, may issue to an applicant a receipt for the fee if the applicant is eligible for a regular license certificate or limited-term license certificate.

(ii) The receipt serves as a temporary regular license certificate or limited-term license certificate allowing the person to drive a motor vehicle while the division is completing its investigation to determine whether the person is entitled to be granted a driving privilege.

(b) The receipt shall be in the person's immediate possession while driving a motor vehicle, and it is invalid when the person's regular license certificate or limited-term license certificate has been issued or when, for good cause, the privilege has been refused.

(c) The division shall indicate on the receipt a date after which it is not valid as a temporary license.

(d) (i) Except as provided in Subsection (4)(d)(ii), the division may not issue a receipt that serves as a temporary driving privilege card or other temporary permit to an applicant for a driving privilege card.

(ii) The division may issue a learner permit issued in accordance with Section 53-3-210.5 to an applicant for a driving privilege card.

(5) (a) The division shall distinguish learner permits, temporary permits, regular license certificates, limited-term license certificates, and driving privilege cards issued to any person younger than 21 years of age by use of plainly printed information or the use of a color or other means not used for other regular license certificates, limited-term license certificates, or driving privilege cards.

(b) The division shall distinguish a regular license certificate, limited-term license certificate, or driving privilege card issued to any person:

(i) younger than 21 years of age by use of a portrait-style format not used for other regular license certificates, limited-term license certificates, or driving privilege cards and by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 21 years of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section 32B-14-403; and

(ii) younger than 19 years of age, by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 19 years of age, which is the legal age for purchasing tobacco products under Section 76-10-104.

(6) The division shall distinguish a limited-term license certificate by clearly indicating on the document:

(a) that it is temporary; and

(b) its expiration date.

(7) (a) The division shall only issue a driving privilege card to a person whose privilege was obtained without providing evidence of lawful presence in the United States as required under Subsection 53-3-205(8).

(b) The division shall distinguish a driving privilege card from a license certificate by:

(i) use of a format, color, font, or other means; and

(ii) clearly displaying on the front of the driving privilege card a phrase substantially similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

(8) The provisions of Subsection (5)(b) do not apply to a learner permit, temporary permit, or any other temporary permit or receipt issued by the division.

(9) The division shall issue temporary license certificates of the same nature, except as to duration, as the license certificates that they temporarily replace, as are necessary to implement applicable provisions of this section and Section 53-3-223.

(10) (a) A governmental entity may not accept a driving privilege card as proof of personal identification.

(b) A driving privilege card may not be used as a document providing proof of a person's age for any government required purpose.

(11) A person who violates Subsection (2)(b) is guilty of a class C misdemeanor.

(12) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a:

(a) driving privilege in the same way as a license or limited-term license issued under this chapter; and

(b) limited-term license certificate or driving privilege card in the same way as a regular license certificate issued under this chapter.

Section 4. Section 53-3-804 is amended to read:

53-3-804. Application for identification card -- Required information -- Release of anatomical gift information.

(1) To apply for an identification card or limited-term identification card, the applicant shall:

(a) be a Utah resident;

(b) have a Utah residence address; and

(c) appear in person at any license examining station.

(2) The applicant shall provide the following information to the division:

(a) true and full legal name and Utah residence address;

(b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

(c) (i) Social Security number; or

(ii) written proof that the applicant is ineligible to receive a Social Security number;

(d) place of birth;

(e) height and weight;

(f) color of eyes and hair;

(g) signature;

(h) photograph;

(i) evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(i) that a person is:

(A) a United States citizen;

(B) a national; or

(C) a legal permanent resident alien; or

(ii) of the applicant's:

(A) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(B) pending or approved application for asylum in the United States;

(C) admission into the United States as a refugee;

(D) pending or approved application for temporary protected status in the United States;

(E) approved deferred action status; or

(F) pending application for adjustment of status to legal permanent resident or conditional resident;

(j) an indication whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act;

(k) an indication whether the applicant is required to register as a sex offender under Section 77-27-21.5; and

(l) an indication whether the applicant is a [~~military~~] veteran of the United States military, verification that the applicant has been honorably discharged from the United States military, and an indication whether the applicant does or does not authorize sharing the information with the state Department of Veterans' Affairs.

(3) The requirements of Section 53-3-234 apply to this section for each person, age 16 and older, applying for an identification card. Refusal to consent to the release of information shall result in the denial of the identification card.

(4) A person who knowingly fails to provide the information required under Subsection (2)(k) is guilty of a class A misdemeanor.

Section 5. Section 53-3-805 is amended to read:

53-3-805. Identification card -- Contents -- Specifications.

(1) (a) The division shall issue an identification card that bears:

(i) the distinguishing number assigned to the person by the division;

(ii) the name, birth date, and Utah residence address of the person;

(iii) a brief description of the person for the purpose of identification;

(iv) a photograph of the person;

(v) a photograph or other facsimile of the person's signature; [~~and~~]

(vi) an indication whether the person intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act[~~.~~]; and

(vii) if the person states that the person is a veteran of the United States military on the application for an identification card in accordance with Section 53-3-804 and provides verification that the person was honorably discharged from the United States military, an indication that the person is a United States military veteran for a regular identification card or a limited-term identification card issued on or after July 1, 2011.

(b) An identification card issued by the division may not bear the person's Social Security number or place of birth.

(2) (a) The card shall be of an impervious material, resistant to wear, damage, and alteration.

(b) Except as provided under Section 53-3-806, the size, form, and color of the card is prescribed by the commissioner.

(3) At the applicant's request, the card may include a statement that the applicant has a special medical problem or allergies to certain drugs, for the purpose of medical treatment.

(4) (a) The indication of intent under Subsection 53-3-804(2)(j) shall be authenticated by the applicant in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all persons who under Subsection 53-3-804(2)(j) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform applicants of anatomical gift options, procedures, and benefits.

(5) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans' Affairs the names and addresses of all persons who indicate their status as a veteran under Subsection 53-3-804(2)(l).

(6) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection 53-3-804(2)(j) or (l), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

Section 6. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 153
H. B. 98
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

CAPITAL OUTLAY FUNDING MODIFICATIONS

Chief Sponsor: Christine F. Watkins
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill expands the permitted uses of proceeds from a capital outlay levy imposed by a local school board.

Highlighted Provisions:

This bill:

- allows a local school board of a school district with an enrollment of fewer than 2,500 students to use the proceeds of a capital outlay levy for certain maintenance and operations functions, in addition to capital outlay or debt service; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-16-107, as last amended by Laws of Utah 2010, Chapters 3, 135, and 160

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

Section 1. Section 53A-16-107 is amended to read:

53A-16-107. Capital outlay levy -- Authority to use proceeds of .0002 tax rate for maintenance of school facilities -- Restrictions and procedure -- Limited authority to use proceeds for general fund purposes -- Notification required when using proceeds for general fund purposes -- Authority for small school districts to use levy proceeds for operation and maintenance of plant services.

(1) Subject to Subsection (3) and except as provided in [~~Subsection (5)~~] Subsections (2), (5), and (6), a local school board may annually impose a capital outlay levy not to exceed .0024 per dollar of taxable value to be used for:

(a) capital outlay; or

(b) debt service[~~; and~~].

[~~(c) subject to Subsection (2), school facility maintenance.~~]

(2) (a) A local school board with an enrollment of 2,500 students or more may utilize the proceeds of a maximum of .0002 per dollar of taxable value of the local school board's annual capital outlay levy for the maintenance of school facilities in the school district.

(b) A local school board that uses the option provided under Subsection (2)(a) shall:

(i) maintain the same level of expenditure for maintenance in the current year as it did in the preceding year, plus the annual average percentage increase applied to the maintenance and operation budget for the current year; and

(ii) identify the expenditure of capital outlay funds for maintenance by a district project number to ensure that the funds are expended in the manner intended.

(c) The State Board of Education shall establish by rule the expenditure classification for maintenance under this program using a standard classification system.

(3) Beginning January 1, 2009, in order to qualify for receipt of the state contribution toward the minimum school program, a local school board in a county of the first class shall impose a capital outlay levy of at least .0006 per dollar of taxable value.

(4) (a) The county treasurer of a county of the first class shall distribute revenues generated by the .0006 portion of the capital outlay levy required in Subsection (3) to school districts within the county in accordance with Section 53A-16-107.1.

(b) If a school district in a county of the first class imposes a capital outlay levy pursuant to this section which exceeds .0006 per dollar of taxable value, the county treasurer of a county of the first class shall distribute revenues generated by the portion of the capital outlay levy which exceeds .0006 to the school district imposing the levy.

(5) (a) Notwithstanding Subsections (1)(a)[~~,~~] and (b)[~~, and (c)~~] and subject to Subsections (5)(b), (c), and (d), for fiscal years 2010-11 and 2011-12, a local school board may use the proceeds of the local school board's capital outlay levy for general fund purposes if the proceeds are not committed or dedicated to pay debt service or bond payments.

(b) If a local school board uses the proceeds described in Subsection (5)(a) for general fund purposes, the local school board shall notify the public of the local school board's use of the capital outlay levy proceeds for general fund purposes:

(i) prior to the board's budget hearing in accordance with the notification requirements described in Section 53A-19-102; and

(ii) at a budget hearing required in Section 53A-19-102.

(c) A local school board may not use the proceeds described in Subsection (5)(a) to fund the following accounting function classifications as provided in the Financial Accounting for Local and State School Systems guidelines developed by the National Center for Education Statistics:

(i) 2300 Support Services - General District Administration; or

(ii) 2500 Support Services - Central Services.

(d) A local school board may not use the proceeds from a distribution described in Section 53A-16-107.1 for general fund purposes.

(6) (a) In addition to the uses described in Subsection (1), a local school board of a school district with an enrollment of fewer than 2,500 students, may use the proceeds of the local school board's capital outlay levy, in fiscal years 2011-12, 2012-13, and 2013-14, for expenditures made within the accounting function classification 2600, Operation and Maintenance of Plant Services, of the Financial Accounting for Local and State School Systems guidelines developed by the National Center for Education Statistics, excluding expenditures for mobile phone service and vehicle operation and maintenance.

(b) If a local school board of a school district with an enrollment of fewer than 2,500 students uses the proceeds of a capital outlay levy for the operation and maintenance of plant services as described in Subsection (6)(a), the local school board shall notify the public of the local school board's use of the capital outlay levy proceeds for operation and maintenance of plant services:

(i) prior to the board's budget hearing in accordance with the notification requirements described in Section 53A-19-102; and

(ii) at a budget hearing required in Section 53A-19-102.

CHAPTER 154
H. B. 103
Passed February 24, 2011
Approved March 22, 2011
Effective May 10, 2011

ELECTION AMENDMENTS

Chief Sponsor: Derek E. Brown
Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill requires that a county stagger the terms of county officers.

Highlighted Provisions:

This bill:

- requires that a county stagger the terms of county officers;
- repeals a provision concerning a county officer's term of office; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-16-6, as last amended by Laws of Utah 2000, Chapter 133

17-18-1.6, as renumbered and amended by Laws of Utah 1997, Chapter 139

REPEALS:

17-53-102, as enacted by Laws of Utah 2000, Chapter 133

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

Section 1. Section 17-16-6 is amended to read:

17-16-6. County officers -- Time of holding elections -- County commissioners -- Terms of office -- Terms staggered.

(1) Except as otherwise provided in an optional plan adopted under Chapter 52, Changing Forms of County Government:

[~~(1)~~] (a) each elected county officer shall be elected at the general election [~~held in November, 1990, and then~~] every four years, except as otherwise provided in this title;

[~~(2)~~] (b) county commissioners shall be elected at the times, in the manner, and for the terms provided in Section 17-52-501; and

[~~(3)~~] (c) an elected officer shall hold office for the term for which [~~he~~] the officer is elected, beginning at noon on the first Monday in January following [~~his~~] the officer's election and until a successor is elected or appointed and qualified, except as provided in Section 17-16-1.

(2) (a) The terms of county officers shall be staggered in accordance with this Subsection (2).

(b) Except as provided in Subsection (2)(c), in the 2014 general election:

(i) the following county officers shall be elected to one six-year term and thereafter elected to a four-year term:

(A) county treasurer;

(B) county recorder;

(C) county surveyor; and

(D) county assessor; and

(ii) all other county officers shall be elected to a four-year term.

(c) If a county legislative body consolidates two or more county offices in accordance with Section 17-16-3 on or after May 10, 2011, the county legislative body shall pass an ordinance that sets the election schedule for the consolidated offices in a reasonable manner that staggers the terms of county officers as provided in this Subsection (2).

Section 2. Section 17-18-1.6 is amended to read:

17-18-1.6. Election of district attorney.

(1) Each district attorney shall be elected at the regular general election beginning in November, 1994, or any regular general election year thereafter.

(2) A district attorney shall hold office for four years, except as provided in Section 17-16-6, the term for which [~~he~~] the district attorney is elected, beginning the first Monday of January following [~~his~~] the election and until a successor is elected or appointed and qualified.

Section 3. Repealer.

This bill repeals:

Section 17-53-102, Officer's term of office.

CHAPTER 155
H. B. 132
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

WATER QUALITY AMENDMENTS

Chief Sponsor: Bill Wright
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill modifies and enacts provisions of the Water Quality Act.

Highlighted Provisions:

This bill:

- authorizes the Water Quality Board to make rules relating to agriculture water that are more stringent than federal regulations if the Conservation Commission approves;
- requires board and commission cooperation in making rules related to agriculture water; and
- establishes provisions relating to damages resulting from an agriculture discharge.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-102, as last amended by Laws of Utah 2001, Chapter 274
19-5-105, as renumbered and amended by Laws of Utah 1991, Chapter 112

ENACTS:

19-5-105.5, Utah Code Annotated 1953

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

Section 1. Section 19-5-102 is amended to read:

19-5-102. Definitions.

As used in this chapter:

(1) "Agriculture discharge":

(a) means the release of agriculture water from the property of a farm, ranch, or feed lot that:

(i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, and other water conveyance system of the state;

(ii) pollutes the ground water of the state; or

(iii) constitutes a significant nuisance on urban land; and

(b) does not include:

(i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land that is not part of a body of water; or

(ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agriculture water" means:

(a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;

(b) return flows from irrigated agriculture; and

(c) agricultural storm water runoff.

[~~(1)~~] (3) "Board" means the Water Quality Board created in Section 19-1-106.

(4) "Commission" means the Conservation Commission created in Section 4-18-4.

[~~(2)~~] (5) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

[~~(3)~~] (6) "Discharge" means the addition of any pollutant to any waters of the state.

[~~(4)~~] (7) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

[~~(5)~~] (8) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

[~~(6)~~] (9) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

[~~(7)~~] (10) "Executive secretary" means the executive secretary of the board.

[~~(8)~~] (11) "Point source":

(a) means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

[~~(9)~~] (12) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

[~~(10)~~] (13) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

[~~(11)~~] (14) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

[~~(12)~~] (15) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

[~~(13)~~] (16) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

[~~(14)~~] (17) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

[~~(15)~~] (18) "Underground injection" means the subsurface emplacement of fluids by well injection.

[~~(16)~~] (19) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

[~~(17)~~] (20) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

[~~(18)~~] (21) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 2. Section 19-5-105 is amended to read:

19-5-105. Rulemaking authority and procedure.

(1) Except as provided in [~~Subsection~~] Subsections (2) and (3), no rule [~~which~~] that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(3) The board may make rules related to agriculture water more stringent than the corresponding federal regulations if the commission approves.

Section 3. Section 19-5-105.5 is enacted to read:

19-5-105.5. Agriculture water.

(1) (a) The board shall draft any rules relating to agriculture water in cooperation with the commission.

(b) The commission shall advise the board before the board may adopt rules relating to agriculture water.

(2) A program or rule adopted by the board for agriculture production or irrigation water shall:

(a) be consistent with the federal Clean Water Act; and

(b) if possible, be developed in a voluntary cooperative program with the agriculture producer associations and the commission.

(3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b) relating to an agriculture discharge.

(b) (i) A person responsible for an agriculture discharge shall mitigate the resulting damage in a reasonable manner, as approved by the executive secretary after consulting with the commission chair.

(ii) A penalty imposed on an agriculture discharge shall be proportionate to the seriousness of the resulting harm, as determined by the executive secretary in consultation with the commission chair.

(iii) An agriculture producer may not be held liable for an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures, as the board defines by rule, to prevent an agriculture discharge.

CHAPTER 156
H. B. 148
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

RAW HONEY AMENDMENTS

Chief Sponsor: Stephen E. Sandstrom
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill requires that honey produced, packed, repacked, distributed, or sold in this state may only be labeled as raw honey if it meets the definition of raw honey described in this bill.

Highlighted Provisions:

This bill:

- defines terms;
- requires that honey produced, packed, repacked, distributed, or sold in this state may only be labeled as raw honey if meets the definition of raw honey described in this bill; and
- grants rulemaking authority to the department to establish labeling requirements for raw honey consistent with this section.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

4-5-20, Utah Code Annotated 1953

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

Section 1. Section 4-5-20 is enacted to read:

4-5-20. Food designated as raw honey.

(1) As used in this section:

(a) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants that the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate, store, and leave in the honeycomb to ripen and mature.

(b) "Raw honey" means honey:

(i) as it exists in the beehive or as obtained by extraction, settling, or straining;

(ii) that is minimally processed; and

(iii) that is not pasteurized.

(2) Honey that is produced, packed, repacked, distributed, or sold in this state may only be labeled and designated as raw honey if it meets:

(a) the definition of raw honey in this section; and

(b) any additional requirements imposed by the department by rule.

(3) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish labeling requirements consistent with the provisions of this section.

CHAPTER 157
H. B. 156
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

ASSESSMENT OF PROPERTY WITH CONSERVATION EASEMENT

Chief Sponsor: Dixon M. Pitcher
Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill modifies provisions relating to the assessment of property by county assessors.

Highlighted Provisions:

This bill:

- modifies a provision requiring a county assessor to consider the effects of a conservation easement on the value of property;
- adds factors that a county assessor is required to consider in assessing property that is subject to a conservation easement; and
- requires the owner of property for which a conservation easement is granted to notify the county assessor of the conservation easement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-18-4, as enacted by Laws of Utah 1985, Chapter 155
59-2-301.1, as last amended by Laws of Utah 2010, Chapter 261

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

Section 1. Section 57-18-4 is amended to read:

57-18-4. Requirements for creation.

(1) Any property owner may grant a conservation easement to any other qualified person as defined in Section 57-18-3 in the same manner and with the same effect as any other conveyance of an interest in real property.

(2) (a) A conservation easement shall be in writing and shall be recorded in the office of the recorder of the county in which the easement is granted.

(b) Within 10 days after a conservation easement is recorded, the owner of real property for which the conservation easement is granted shall deliver to the assessor of the county in which the property is located a copy of the conservation easement and proof that the conservation easement has been recorded.

(c) Before January 1, 2012, each owner of property subject to a conservation easement recorded before May 10, 2011, shall deliver to the assessor of the county in which the property is located a copy of the conservation easement and proof that the conservation easement has been recorded.

(3) The instrument that creates a conservation easement shall identify and describe the land subject to the conservation easement by legal description, specify the purpose for which the easement is created, and include a termination date or a statement that the easement continue in perpetuity.

(4) Any qualified person, as defined in Section 57-18-3, that receives a conservation easement shall disclose to the easement's grantor, at least three days prior to the granting of the easement, the types of conservation easements available, the legal effect of each easement, and that the grantor should contact an attorney concerning any possible legal and tax implications of granting a conservation easement.

Section 2. Section 59-2-301.1 is amended to read:

59-2-301.1. Assessment of property subject to a conservation easement -- Assessment of golf course or hunting club.

(1) In assessing the fair market value of property subject to a conservation easement under Title 57, Chapter 18, Land Conservation Easement Act, a county assessor shall [~~include as part of the assessment any effects the conservation easement may have on~~] consider factors relating to the property and neighboring property that affect the fair market value of the property[~~.~~] being assessed, including:

(a) value that transfers to neighboring property because of the presence of a conservation easement on the property being assessed;

(b) practical and legal restrictions on the development potential of the property because of the presence of the conservation easement;

(c) the absence of neighboring property similarly subject to a conservation easement to provide a basis for comparing values between properties; and

(d) any other factor that causes the fair market value of the property to be affected because of the presence of a conservation easement.

(2) (a) In assessing the fair market value of a golf course or hunting club, a county assessor shall consider factors relating to the golf course or hunting club and neighboring property that affect the fair market value of the golf course or hunting club, including:

(i) value that transfers to neighboring property because of the presence of the golf course or hunting club;

(ii) practical and legal restrictions on the development potential of the golf course or hunting club; and

(iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future.

(b) The valuation method a county assessor may use in determining the fair market value of a golf course or hunting club includes:

(i) the cost approach;

(ii) the income capitalization approach; and

(iii) the sales comparison approach.

CHAPTER 158
H. B. 161
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

GUARDIAN AD LITEM RESPONSIBILITIES

Chief Sponsor: Curtis Oda
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill requires that guardians ad litem participate in a child and family plan for a client.

Highlighted Provisions:

This bill:

- requires guardians ad litem to participate in child and family plan meetings to represent the best interest of their client.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-205, as last amended by Laws of Utah 2009, Chapter 161

78A-6-902, as last amended by Laws of Utah 2009, Chapters 32 and 161

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

Section 1. Section 62A-4a-205 is amended to read:

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

(i) mental health;

(ii) education; and

(iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

(ii) the child;

(iii) the child's foster parents; [~~and~~]

(iv) if appropriate, the child's stepparent[~~.~~]; and

(v) the child's guardian ad litem, if one has been appointed by the court.

(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;

(c) the primary permanency goal for the child and the reason for selection of that goal;

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and

(k) social summaries that include case history information pertinent to case planning.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(2)(a)(ii) and (b).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

(i) protect the physical safety of the child;

(ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(i) the child's fear of the parent; and

(ii) the nature of the alleged abuse or neglect.

Section 2. Section 78A-6-902 is amended to read:

78A-6-902. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the child is removed from the child's home by the division; or

(b) the petition is filed.

(3) The director shall ensure that each attorney guardian ad litem employed by the office:

(a) represents the best interest of each client of the office in all [~~proceedings~~] venues, including:

(i) court proceedings; and

(ii) meetings to develop, review, or modify the child and family plan with the Division of Child and Family Services in accordance with Section 62A-4a-205;

(b) prior to representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

(ii) nationally recognized standards for an attorney guardian ad litem;

(c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(d) (i) personally meets with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interviews the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor; and

(iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:

(A) to the extent possible, determines the minor's goals and concerns regarding placement; and

(B) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;

(e) personally attends all review hearings pertaining to the minor's case;

(f) participates in all appeals, unless excused by order of the court;

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to:

(i) maintain a minor in the minor's home; or

(ii) reunify a child with the child's parent;

(h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

(i) the status of the minor's case;

(ii) all court and administrative proceedings;

(iii) discussions with, and proposals made by, other parties;

(iv) court action; and

(v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor; and

(i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:

(i) determine whether services ordered by the court:

(A) are actually provided; and

(B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

(i) all costs resulting from the appointment of an attorney guardian ad litem; and

(ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against:

(A) a legal guardian, when that guardian is the state; or

(B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

(d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

(i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.

(c) A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(d) The court may appoint one attorney guardian ad litem to represent the best interests of more than one child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding:

(a) the number of times the attorney has had contact with each minor; and

(b) the actions the attorney has taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

(i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and

(ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

(A) the unique role of an attorney guardian ad litem described in Subsection (8); and

(B) the state's role and responsibility:

(I) to provide a guardian ad litem program; and

(II) as parens patriae, to protect minors.

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

CHAPTER 159
H. B. 162
Passed March 3, 2011
Approved March 22, 2011
Effective May 10, 2011

PEDESTRIANS ON FREEWAYS

Chief Sponsor: Lee B. Perry
Senate Sponsor: Ross I. Romero

LONG TITLE

General Description:

This bill modifies the Traffic Code by amending provisions relating to pedestrians on freeways.

Highlighted Provisions:

This bill:

- prohibits a pedestrian from walking along or on a no access freeway facility except during an emergency.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-1009, as renumbered and amended by Laws of Utah 2005, Chapter 2

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

Section 1. Section 41-6a-1009 is amended to read:

41-6a-1009. Use of roadway by pedestrians -- Prohibited activities.

(1) Where there is a sidewalk provided and its use is practicable, a pedestrian may not walk along or on an adjacent roadway.

(2) Where a sidewalk is not provided, a pedestrian walking along or on a highway shall walk only on the shoulder, as far as practicable from the edge of the roadway.

(3) Where a sidewalk or a shoulder is not available, a pedestrian walking along or on a highway shall:

(a) walk as near as practicable to the outside edge of the roadway; and

(b) if on a two-way roadway, walk only on the left side of the roadway facing traffic.

(4) A person may not sit, stand, or loiter on or near a roadway for the purpose of soliciting from the occupant of a vehicle:

(a) a ride;

(b) contributions;

(c) employment;

(d) the parking, watching, or guarding of a vehicle; or

(e) other business.

(5) A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be on a highway except on a sidewalk or sidewalk area.

(6) Except as otherwise provided in this chapter, a pedestrian on a roadway shall yield the right-of-way to all vehicles on the roadway.

(7) A pedestrian may not walk along or on a no access freeway facility except during an emergency.

CHAPTER 160
H. B. 169
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

FIREARM LAWS MODIFICATIONS

Chief Sponsor: Jennifer M. Seelig
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies provisions of the Utah Criminal Code dealing with the purchase and possession of weapons.

Highlighted Provisions:

This bill:

- defines Federal Firearms Licensee as related to the sale of a firearm by a licensed firearm dealer and required criminal history background checks;
- conforms state law with federal firearms laws regarding the identification and transfer of firearms among Federal Firearms License holders; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63K-4-405, as enacted by Laws of Utah 2008, Chapter 262
76-10-501, as last amended by Laws of Utah 2010, Chapter 62
76-10-526, as last amended by Laws of Utah 2010, Chapter 62

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

Section 1. Section 63K-4-405 is amended to read:

63K-4-405. Prohibition of restrictions on and confiscation of a firearm or ammunition during an emergency.

(1) As used in this section:

(a) (i) "Confiscate" means for an individual in Utah to intentionally deprive another of a privately owned firearm.

(ii) "Confiscate" does not include the taking of a firearm from an individual:

(A) in self-defense;

(B) possessing a firearm while the individual is committing a felony or misdemeanor; or

(C) who may not, under state or federal law, possess the firearm.

(b) "Firearm" has the same meaning as defined in [~~Subsection~~] Section 76-10-501[~~(9)~~].

(2) During a declared state of emergency or local emergency under this chapter:

(a) neither the governor nor an agency of a governmental entity or political subdivision of the state may impose restrictions, which were not in force [~~prior to~~] before the declared state of emergency, on the lawful possession, transfer, sale, transport, storage, display, or use of a firearm or ammunition; and

(b) an individual, while acting or purporting to act on behalf of the state or a political subdivision of the state, may not confiscate a privately owned firearm of another individual.

(3) A law or regulation passed during a declared state of emergency that does not relate specifically to the lawful possession or use of a firearm and that has attached criminal penalties may not be used to justify the confiscation of a firearm from an individual acting in defense of self, property, or others when on:

(a) the individual's private property; or

(b) the private property of another as an invitee.

(4) (a) An individual who has a firearm confiscated in violation of Subsection (2) may bring a civil action in a court having the appropriate jurisdiction:

(i) for damages, in the maximum amount of $10,000, against a person who violates Subsection (2);

(ii) for a civil penalty, in the amount of $5,000 per violation, against a person who violates Subsection (2); and

(iii) for return of the confiscated firearm.

(b) As used in this Subsection (4), "person" means an individual, the governmental entity on whose behalf the individual is acting or purporting to act, or both the individual and the governmental entity.

(5) (a) A law enforcement officer [~~shall~~] is not [~~be~~] subject to disciplinary action for refusing to confiscate a firearm under this section if:

(i) ordered or directed to do so by a superior officer; and

(ii) by obeying the order or direction, the law enforcement officer would be committing a violation of this section.

(b) For purposes of this Subsection (5), disciplinary action might include:

(i) dismissal, suspension, or demotion;

(ii) loss of or decrease in benefits, pay, privileges or conditions of employment; and

(iii) any type of written or electronic indication, permanent or temporary, on the officer's personnel record of the officer's refusal to obey the unlawful order.

(6) (a) If a law enforcement officer commits a violation of this section, the officer's liability in an action brought under Subsection (4)(a) is limited to

5% of the damages and civil penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing evidence that the officer was obeying a direct and unlawful order from a superior officer or authority.

(b) The court shall assess the balance of the damages and civil penalty, the remaining 95%, [~~shall be assessed~~] against the superior officer or authority who ordered or directed the confiscation in violation of this section.

Section 2. Section 76-10-501 is amended to read:

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm[~~: (i) (A)~~], including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system[~~; and (B) that was~~], manufactured in or before 1898; or

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) [~~any~~] a weapon that incorporates a firearm frame or receiver;

(ii) [~~any~~] a firearm that is converted into a muzzle loading weapon; or

(iii) [~~any~~] a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and [~~is~~]

(ii) readily accessible for immediate use.

(b) A dangerous weapon [~~shall not be considered~~] is not a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the [~~division~~] bureau or the local law enforcement agency where the firearms dealer conducts business.

(5) "Curio or relic firearm" means [~~any~~] a firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years [~~prior to~~] before the current date; and

(ii) is not a replica of a firearm described in Subsection (5)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

(6) (a) "Dangerous weapon" means [~~any~~] an item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors shall be used in determining whether a knife, or [~~any other~~] another item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

(c) "Dangerous weapon" does not include [~~any~~] an explosive, chemical, or incendiary device as defined by Section 76-10-306.

(7) "Dealer" means a person who is:

(a) licensed under [~~crimes and criminal procedure,~~] 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(8) "Enter" means intrusion of the entire body.

(9) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

[~~(9)~~] (10) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

[~~(10)~~] (11) "Firearms transaction record form" means a form created by the [~~division~~] bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

[~~(11)~~] (12) "Fully automatic weapon" means [~~any~~] a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

[~~(12)~~] (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

[~~(13)~~] (14) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

[~~(14)~~] (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

[~~(15)~~] (16) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

[~~(16)~~] (17) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

[~~(17)~~] (18) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or [~~any~~] a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

[~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

[~~(19)~~] (20) "State entity" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

[~~(20)~~] (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

Section 3. Section 76-10-526 is amended to read:

76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders.

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued [~~pursuant to~~] under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued [~~in accordance with~~] under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual[~~, except a dealer,~~] purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the Social Security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the [~~form~~] information required by Subsection (4) to the bureau immediately upon its [~~completion~~] receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is [~~so~~] prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the [~~gun~~] firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction where the [~~person~~] individual resides.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules [~~as provided~~] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the [~~division pursuant to~~] bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) (i) A dealer shall collect a criminal history background check fee [~~related to~~] of $7.50 for the sale of a firearm under this section[~~, which is $7.50~~].

(ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued [~~pursuant to~~] under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the [~~division~~] bureau that the individual's concealed firearm permit is valid.

CHAPTER 161
H. B. 171
Passed March 9, 2011
Approved March 22, 2011
Effective July 1, 2011

ABORTION CLINIC LICENSING

Chief Sponsor: Carl Wimmer
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions of the Health Care Facility Licensing and Inspection Act in relation to abortion clinics.

Highlighted Provisions:

This bill:

- defines terms;
- requires annual licensing for abortion clinics that provide abortions during the first and second trimesters of pregnancy;
- grants rulemaking authority to the Department of Health (department) in relation to licensing of abortion clinics;
- requires, in order for an abortion clinic to obtain and maintain a license, that the abortion clinic comply with statutory requirements, rules, health and safety standards, and recordkeeping requirements;
- requires inspection of abortion clinics;
- requires the department to establish a fee on abortion clinics to pay for the costs relating to this bill;
- modifies exemptions from the Health Care Facility Licensing and Inspection Act;
- in order to assist the department in fulfilling the requirements of this bill, requires the Division of Occupational and Professional Licensing to provide the department with the name and address of each physician who reports that they perform elective abortions in Utah in a location other than a hospital;
- provides that the information described in the preceding paragraph is a protected record;
- provides intent language; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

26-21-2, as last amended by Laws of Utah 2005, Chapter 31
26-21-7, as last amended by Laws of Utah 2004, Chapter 141
26-21-8, as last amended by Laws of Utah 2003, Chapter 155
58-67-304, as last amended by Laws of Utah 2005, Chapter 94
58-68-304, as last amended by Laws of Utah 2005, Chapter 94
63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

ENACTS:

26-21-6.5, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 26-21-2 is amended to read:

26-21-2. Definitions.

As used in this chapter:

[~~(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital, that performs abortions and provides abortion services during the second trimester of pregnancy.~~]

(1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

(2) "Activities of daily living" means essential activities including:

(a) dressing;

(b) eating;

(c) grooming;

(d) bathing;

(e) toileting;

(f) ambulation;

(g) transferring; and

(h) self-administration of medication.

(3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.

(4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.

(5) (a) "Assisted living facility" means:

(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:

(A) require protected living arrangements; and

(B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and

(ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services.

(b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care;

(ii) administration of medication; and

(iii) support services promoting residents' independence and self sufficiency.

(6) "Birthing center" means a freestanding facility, receiving maternal clients and providing care during pregnancy, delivery, and immediately after delivery.

(7) "Committee" means the Health Facility Committee created in Section 26-1-7.

(8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

(9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

(10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.

(12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.

(13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.

(b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice, except that it does include an abortion clinic.

(14) "Health maintenance organization" means an organization, organized under the laws of any state which:

(a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

(b) (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;

(ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and

(iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(15) (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.

(b) "Home health agency" does not mean an individual who provides services under the authority of a private license.

(16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.

(17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:

(a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;

(b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or

(c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.

(18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(19) "Resident" means a person 21 years of age or older who:

(a) as a result of physical or mental limitations or age requires or requests services provided in an assisted living facility; and

(b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.

(20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.

(21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.

(23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions, as defined in Section 76-7-301, after the first trimester of pregnancy.

(24) "Type II abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or

(b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

Section 2. Section 26-21-6.5 is enacted to read:

26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.

(1) Beginning on April 1, 2012, a type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion clinic.

(2) A type II abortion clinic may not operate in the state without a license issued by the department to operate a type II abortion clinic.

(3) (a) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:

(i) a type I abortion clinic; and

(ii) a type II abortion clinic.

(b) The rules established under Subsection (3)(a) shall take effect on April 1, 2012.

(4) Beginning on April 1, 2012, in order to receive and maintain a license described in this section, an abortion clinic shall:

(a) apply for a license on a form prescribed by the department;

(b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection (3)(a) that relate to the type of abortion clinic licensed;

(c) comply with the recordkeeping and reporting requirements of Subsection 76-7-305.6(4) and Section 76-7-313;

(d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;

(e) pay the annual licensing fee; and

(f) cooperate with inspections conducted by the department.

(5) Beginning on April 1, 2012, the department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.

(6) Beginning on April 1, 2012, the department shall charge an annual license fee, set by the department in accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

(7) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

Section 3. Section 26-21-7 is amended to read:

26-21-7. Exempt facilities.

This chapter does not apply to:

(1) a dispensary or first aid facility maintained by any commercial or industrial plant, educational institution, or convent;

(2) a health care facility owned or operated by an agency of the United States;

(3) the office of a physician or dentist whether it is an individual or group practice, except that it does apply to an abortion clinic;

(4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;

(5) any health care facility owned or operated by the Department of Corrections, created in Section 64-13-2; and

(6) a residential facility providing 24-hour care:

(a) that does not employ direct care staff;

(b) in which the residents of the facility contract with a licensed hospice agency to receive end-of-life medical care; and

(c) that meets other requirements for an exemption as designated by administrative rule.

Section 4. Section 26-21-8 is amended to read:

26-21-8. License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.

(1) (a) A person or governmental unit acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a health care facility in this state without receiving a license from the department as provided by this chapter and the rules of the committee.

(b) This Subsection (1) does not apply to facilities that are exempt under Section 26-21-7.

(2) A license issued under this chapter is not assignable or transferable.

(3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.

(4) (a) The department may issue a license for a period of time not to exceed 12 months from the date of issuance for an abortion clinic and not to exceed 24 months from the date of issuance [~~to~~] for other health care facilities that meet the provisions of this chapter and department rules adopted pursuant to this chapter.

(b) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the department.

(c) The license shall be renewed upon completion of the application requirements, unless the department finds the health care facility has not complied with the provisions of this chapter or the rules adopted pursuant to this chapter.

(5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.

(6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this chapter shall be given a reasonable time for compliance as determined by the committee.

Section 5. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(j); and

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 6. Section 58-68-304 is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(j); and

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the

contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(k).

(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 7. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the

appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial

Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; [~~and~~]

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality[~~.~~]; and

(61) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4).

Section 8. Legislative intent.

The Legislature is aware of the discovery, nationwide, of abortion clinics that operate in unsafe and unsanitary conditions, risking the health and safety of women. The Legislature is very concerned of the risks posed to women in these circumstances and intends to take action to help ensure that these conditions do not exist in Utah. The purpose of this bill is to protect women in Utah from these risks in a manner that does not conflict with the rights, held by state and federal courts to be protected by the United States Constitution, in relation to abortion. The Legislature intends that the department enact rules, and enforce those rules and the provisions of this bill, in a manner that does not place an undue burden on these rights.

Section 9. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 162
H. B. 174
Passed March 3, 2011
Approved March 22, 2011
Effective May 10, 2011

CONTRACTING FOR MEDICAID ELIGIBILITY DETERMINATION SERVICES

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill requires the Department of Health and the Department of Workforce Services to study the state's Medicaid eligibility determination system.

Highlighted Provisions:

This bill:

- requires the study of the state's eligibility determination system for Medicaid to determine whether consolidation of the system or privatization would create greater efficiencies; and
- requires a report of the study to the Legislature's Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee prior to October 20, 2011.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
26-18-3.3, Utah Code Annotated 1953

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

Section 1. Section 26-18-3.3 is enacted to read:

26-18-3.3. Study of privatization of eligibility determination.

(1) The department shall work with the Department of Workforce Services, the Department of Human Services, and the Privatization Policy Board created in Section 63I-4-201 to study the state's eligibility determination system for the state Medicaid program in accordance with this section.

(2) (a) The study shall include the state's eligibility determination system for the following programs:

(i) the state Medicaid program;

(ii) the Utah Children's Health Insurance Program created under Chapter 40, Utah Children's Health Insurance Act;

(iii) the Primary Care Network;

(iv) the Utah Premium Partnership; and

(v) other eligibility systems administered by the Department of Workforce Services.

(b) The study shall include:

(i) the workflow and operations of the eligibility determination systems for the programs described in Subsection (2)(a); and

(ii) efficiencies that may be obtained through:

(A) consolidation of the eligibility determination systems;

(B) privatization of the eligibility determination systems; and

(C) other technology or organizational solutions for the eligibility determination systems.

(3) The department, the Department of Workforce Services, and the Privatization Policy Board shall, prior to October 20, 2011, report to the Legislature's Health and Human Services Interim Committee and to the Social Services Appropriations Subcommittee regarding the findings of the study and any recommendations and options regarding the advantages and disadvantages to the state in privatizing the eligibility determination system.

CHAPTER 163
H. B. 190
Passed February 17, 2011
Approved March 22, 2011
Effective May 10, 2011
(Retrospective operation to January 1, 2011)

DELINQUENT PROPERTY TAX AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill changes provisions related to delinquent property taxes.

Highlighted Provisions:

This bill:

- adjusts the interest rate charged on delinquent personal property taxes to be similar to the interest rate charged on delinquent real property taxes;
- adjusts the minimum penalty related to delinquent personal property taxes; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation to January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-2-307, as last amended by Laws of Utah 2009, Chapter 154
59-2-1302, as last amended by Laws of Utah 2008, Chapter 61

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

Section 1. Section 59-2-307 is amended to read:

59-2-307. Refusal by taxpayer to file signed statement -- Penalty -- Assessor to estimate value -- Reporting information to other counties.

(1) (a) Each person who fails to file the signed statement required by Section 59-2-306, fails to file the signed statement with respect to name and place of residence, or fails to appear and testify when requested by the assessor, shall pay a penalty equal to 10% of the estimated tax due, but not less than [~~$100~~] $25 for each failure to file a signed and completed statement.

(b) Each penalty under Subsection (1)(a) shall be collected in the manner provided by Sections 59-2-1302 and 59-2-1303, except as otherwise provided for in this section, or by a judicial proceeding brought in the name of the assessor.

(c) All money recovered by any assessor under this section shall be paid into the county treasury.

(2) (a) The penalty imposed by Subsection (1)(a) may not be waived or reduced by the assessor, county, county Board of Equalization, or commission except pursuant to a procedure for the review and approval of reductions and waivers adopted by county ordinance, or by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) (i) Except as provided in Subsection (2)(b)(ii), a penalty under Subsection (1)(a) may be imposed on or after May 16 of the year the statement described in Section 59-2-306 is requested by the county assessor.

(ii) A penalty under Subsection (1)(a) may not be imposed until 30 days after the postmark date of mailing of a subsequent notice if the signed statement described in Section 59-2-306 is requested:

(A) on or after March 16; or

(B) by a county assessor of a county of the first class.

(3) (a) If an owner neglects or refuses to file a signed statement requested by an assessor as required under Section 59-2-306:

(i) the assessor shall:

(A) make a record of the failure to file; and

(B) make an estimate of the value of the property of the owner based on known facts and circumstances; and

(ii) the assessor of a county of the first class:

(A) shall make a subsequent request by mail for the signed statement, informing the owner of the consequences of not filing a signed statement; and

(B) may impose a fee for the actual and necessary expenses of the mailing under Subsection (3)(a)(ii)(A).

(b) The value fixed by the assessor in accordance with Subsection (3)(a)(i) may not be reduced by the county board of equalization or by the commission.

(4) If the signed statement discloses property in any other county, the assessor shall file the signed statement and send a copy to the assessor of each county in which the property is located.

Section 2. Section 59-2-1302 is amended to read:

59-2-1302. Assessor or treasurer's duties -- Collection of uniform fees and taxes on personal property -- Unpaid tax or unpaid uniform fee is a lien -- Delinquency interest -- Rate.

(1) After the assessor assesses taxes or uniform fees on personal property, the assessor or, if this duty has been reassigned in an ordinance under Section 17-16-5.5, the treasurer shall:

(a) list the personal property tax or uniform fee [~~as provided in Subsection (3)~~] with the real property of the owner in the manner required by law and as provided under Subsection (3), if the assessor or treasurer, as the case may be, determines that the real property is sufficient to

secure the payment of the personal property taxes or uniform fees;

(b) immediately collect the taxes or uniform fees due on the personal property; or

(c) on or before the day on which the tax or uniform fee on personal property is due, obtain from the taxpayer a bond that is:

(i) payable to the county in an amount equal to the amount of the tax or uniform fee due, plus 20% of the amount of the tax or uniform fee due; and

(ii) conditioned for the payment of the tax or uniform fee on or before November 30.

(2) (a) An unpaid tax as defined in Section 59-1-705, or unpaid uniform fee upon personal property listed with the real property is a lien upon the owner's real property as of [~~12 o'clock~~] noon of January 1 of each year.

(b) An unpaid tax as defined in Section 59-1-705, or unpaid uniform fee upon personal property not listed with the real property is a lien upon the owner's personal property as of [~~12 o'clock~~] noon of January 1 of each year.

(3) The assessor or treasurer, as the case may be, shall make the listing under this section:

(a) on the record of assessment of the real property; or

(b) by entering a reference showing the record of the assessment of the personal property on the record of assessment of the real property.

(4) (a) The amount of tax or uniform fee assessed upon personal property is delinquent if the tax or uniform fee is not paid on the day on which the tax notice or the combined signed statement and tax notice under Section 59-2-306 is due.

(b) [~~Delinquent~~] Subject to Subsection (4)(c), delinquent taxes or uniform fees under Subsection (4)(a) shall bear interest from the date of delinquency until the day on which the delinquent tax or uniform fee is paid at an interest rate equal to the sum of:

(i) 6%; and

(ii) the federal funds rate target:

(A) established by the Federal Open Markets Committee; and

(B) that exists on the January 1 immediately preceding the date of delinquency.

(c) The interest rate described in Subsection (4)(b) may not be less than 7% or more than 10%.

(5) A county assessor or treasurer shall deposit all collections of public funds from a personal property tax or personal property uniform fee no later than once every seven banking days with:

(a) the state treasurer; or

(b) a qualified depository for the credit of the county.

Section 3. Retrospective operation.

This bill has retrospective operation to January 1, 2011.

CHAPTER 164
H. B. 198
Passed February 18, 2011
Approved March 22, 2011
Effective May 10, 2011

TOBACCO RELATED PENALTY AMENDMENTS

Chief Sponsor: Paul Ray
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends penalty provisions of the Cigarette and Tobacco Tax and Licensing Act.

Highlighted Provisions:

This bill:

- permits the Tax Commission to waive, reduce, or compromise certain penalties;
- provides that a person who fails to timely file certain reports relating to the taxation of tobacco, or who provides false or misleading information on, or in relation to, a report:
  - is guilty of a class B misdemeanor; and
  - is subject to revocation or suspension of a license and a civil penalty imposed by the commission; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-14-214, as last amended by Laws of Utah 2005, Chapter 204
59-14-407, as last amended by Laws of Utah 2008, Chapter 382
59-14-606, as enacted by Laws of Utah 2005, Chapter 204

ENACTS:

59-14-103, Utah Code Annotated 1953

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

Section 1. Section 59-14-103 is enacted to read:

59-14-103. Waiver or reduction of penalty.

The commission may, upon making a record of its actions, and upon reasonable cause shown, waive, reduce, or compromise any of the penalties or interest imposed under:

(1) Subsection 59-14-212(4)(b)(ii);

(2) Subsection 59-14-214(5)(b)(ii);

(3) Subsection 59-14-407(5)(b)(ii);

(4) Subsection 59-14-606(7)(b)(ii); or

(5) Subsection 59-14-608(1)(d).

Section 2. Section 59-14-214 is amended to read:

59-14-214. Nonparticipating manufacturer equity assessment.

(1) As used in this section, "nonparticipating manufacturer" means a tobacco product manufacturer, as defined in [~~Subsection~~] Section 59-22-202[~~(9)~~], that is not a participating manufacturer within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in [~~Subsection~~] Section 59-22-202[~~(5)~~].

(2) (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette, for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as required under Section 59-14-205.

(b) The equity assessment imposed by this section is in addition to all other assessments, fees, and taxes levied under existing law.

(c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.

(d) Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by Section 59-14-204.

(3) The purposes of this equity assessment are:

(a) to recover health care costs to the state imposed by nonparticipating manufacturers;

(b) to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;

(c) to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement, as defined in [~~Subsection~~] Section 59-22-202[~~(5)~~];

(d) to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and

(e) to fund enforcement and administration of:

(i) Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;

(ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers; and

(iii) the equity assessment imposed by this section.

(4) [~~(a)~~] Each manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to a package of cigarettes, shall report monthly to the commission for each place of business, the number and denominations of stamps affixed to individual packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor, wholesaler, or retail dealer in the preceding month, including the manufacturer and brand family.

[~~(b) A person required to file a report under this section is subject to the penalties under Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or fraudulent information.~~]

(5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:

(a) is guilty of a class B misdemeanor; and

(b) is subject to:

(i) revocation or suspension of a license under Part 2, Cigarettes; and

(ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:

(A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or

(B) $5,000.

Section 3. Section 59-14-407 is amended to read:

59-14-407. Reporting of manufacturer name.

(1) As used in this section:

(a) "Cigarette" has the same meaning as defined in Section 59-22-202.

(b) "Tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.

(2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:

(a) the quantity of cigarettes in the package or container; and

(b) the name of the manufacturer of the cigarettes.

(3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette under Section 59-22-202 and manufactured or sold by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report quarterly to the commission:

(a) the quantity of cigarettes upon which the tax is levied; and

(b) the name of the manufacturer of each cigarette.

(4) [~~(a)~~] The reports under Subsections (2) and (3) shall be made no later than quarterly on or before the last day of the month following each calendar quarterly period pursuant to rules established by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(b) A person required to file a report under this section is subject to the penalties under Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or fraudulent information.~~]

(5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:

(a) is guilty of a class B misdemeanor; and

(b) is subject to:

(i) revocation or suspension of a license under Part 2, Cigarettes, and Part 3, Tobacco Products; and

(ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:

(A) 500% of the retail value of the cigarettes and tobacco products for which an accurate report was not filed; or

(B) $5,000.

Section 4. Section 59-14-606 is amended to read:

59-14-606. Reporting by stamping agents.

(1) A stamping agent shall submit the following information to the commission not later than 30 calendar days after the end of each calendar quarter, or more frequently if required by the commission by administrative rule in accordance with Section 59-14-607:

(a) a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the reporting period;

(b) the equivalent stick count for roll your own tobacco, for which the stamping agent paid the tobacco product tax during the reporting period;

(c) the equivalent total number of cigarettes or stick count for which the stamping agent paid taxes for the reporting period; and

(d) any other information the commission determines is necessary to enforce this part.

(2) The stamping agent shall maintain, and make available to the commission, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the commission for a period of five years.

(3) The commission may share information received under this part with federal, state, or local agencies as necessary for enforcement of this part, the Model Tobacco Settlement Act, or corresponding laws of other states.

(4) For purposes of complying with the Model Tobacco Settlement Act, the commission may require, at any time, from the nonparticipating manufacturer and from the financial institution in which the manufacturer has established a qualified escrow fund, proof of:

(a) the amount of money in the fund, exclusive of interest;

(b) the amount and date of each deposit to the fund; and

(c) the amount and date of each withdrawal from the fund.

(5) In addition to the information required to be submitted pursuant to Sections 59-14-214 and 59-22-203 and this part, the commission may require by administrative rule adopted pursuant to Section 59-14-607, a stamping agent or tobacco product manufacturer to submit any additional information including samples of the packaging or labeling of each brand family, as is necessary to enable the commission to determine whether a tobacco product manufacturer is in compliance with this part.

(6) No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this part.

(7) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:

(a) is guilty of a class B misdemeanor; and

(b) is subject to:

(i) revocation or suspension of a license under Part 2, Cigarettes; and

(ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:

(A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or

(B) $5,000.

CHAPTER 165
H. B. 202
Passed February 17, 2011
Approved March 22, 2011
Effective May 10, 2011

DEATH PENALTY PROCEDURES AMENDMENTS

Chief Sponsor: Kay L. McIff
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:
This bill modifies the Criminal Code and the Judicial Code regarding capital sentencing procedures.

Highlighted Provisions:
This bill:
- clarifies when a petitioner has a right to funded counsel for successive petitions; and
- sets limits on the obtaining of execution stays for successive postconviction petitions.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:

AMENDS:
77-19-8, as last amended by Laws of Utah 2008, Chapter 3
78B-9-202, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 77-19-8 is amended to read:

77-19-8. Judgment of death, when suspended, and by whom.

(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor or the Board of Pardons and Parole, may not stay or suspend the execution of a judgment of death.

(2) (a) A court of competent jurisdiction shall issue a temporary stay of judgment of death when:

(i) the judgment is appealed;

(ii) the judgment is automatically reviewed;

(iii) the person sentenced to death files a first petition for postconviction relief after the direct appeal under Title 78B, Chapter 9, [~~Post-Conviction~~] Postconviction Remedies Act;

(iv) the person sentenced to death requests counsel under Subsection 78B-9-202(2)(a) to represent [~~him~~] the person in [~~an~~] a first action for postconviction relief under Title 78B, Chapter 9, [~~Post-Conviction~~] Postconviction Remedies Act; or

(v) counsel enters an appearance to represent the person sentenced to death in [~~an~~] a first action for postconviction relief under Title 78B, Chapter 9, [~~Post-Conviction~~] Postconviction Remedies Act.

(b) A court may not issue a temporary stay of judgment of death when the person sentenced to death files a petition for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, after a first petition has been denied or dismissed, unless the court first finds all of the following:

(i) the claims would not be barred under Section 78B-9-106;

(ii) the claims are potentially meritorious; and

(iii) the petition may not be reasonably disposed of before the execution date.

[~~(b)~~] (c) (i) The executive director of the Department of Corrections or a designee under Section 77-19-202 may temporarily suspend the execution if the person sentenced to death appears to be incompetent or pregnant.

(ii) A temporary suspension under Subsection (2)[~~(b)~~](c)(i) shall end if the person is determined to be:

(A) competent;

(B) not pregnant; or

(C) no longer incompetent or pregnant.

(3) (a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the appeal, automatic review, or action under Title 78B, Chapter 9, [~~Post-Conviction~~] Postconviction Remedies Act is concluded.

(b) A request for counsel under Section 78B-9-202 does not constitute an application for postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.

Section 2. Section 78B-9-202 is amended to read:

CHAPTER 9. POSTCONVICTION REMEDIES ACT

78B-9-202. Appointment and payment of counsel in death penalty cases.

(1) A person who has been sentenced to death and whose conviction and sentence has been affirmed on appeal shall be advised in open court, on the record, in a hearing scheduled no less than 30 days prior to the signing of the death warrant, of the provisions of this chapter allowing challenges to the conviction and death sentence and the appointment of counsel for indigent petitioners.

(2) (a) If a petitioner requests the court to appoint counsel, the court shall determine whether the petitioner is indigent and make findings on the record regarding the petitioner's indigency. If the court finds that the petitioner is indigent, it shall, subject to the provisions of Subsection (5), promptly appoint counsel who is qualified to represent petitioners in postconviction death penalty cases as required by Rule 8 of the Utah Rules of Criminal Procedure. Counsel who represented the petitioner

at trial or on the direct appeal may not be appointed to represent the petitioner under this section.

(b) A petitioner who wishes to reject the offer of counsel shall be advised on the record by the court of the consequences of the rejection before the court may accept the rejection.

(3) Attorney fees and litigation expenses incurred in providing the representation provided for in this section and that the court has determined are reasonable shall be paid from state funds by the Division of Finance according to rules established pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(a) In determining whether the requested funds are reasonable, the court should consider:

(i) the extent to which the petitioner requests funds to investigate and develop evidence and legal arguments that duplicate the evidence presented and arguments raised in the criminal proceeding; and

(ii) whether the petitioner has established that the requested funds are necessary to develop evidence and legal arguments that are reasonably likely to support postconviction relief.

(b) The court may authorize payment of attorney fees at a rate of $125 per hour up to a maximum of $60,000. The court may exceed the maximum only upon a showing of good cause as established in Subsections (3)(e) and (f).

(c) The court may authorize litigation expenses up to a maximum of $20,000. The court may exceed the maximum only upon a showing of good cause as established in Subsections (3)(e) and (f).

(d) The court may authorize the petitioner to apply ex parte for the funds permitted in Subsections (3)(b) and (c) upon a motion to proceed ex parte and if the petitioner establishes the need for confidentiality. The motion to proceed ex parte must be served on counsel representing the state, and the court may not grant the motion without giving the state an opportunity to respond.

(e) In determining whether good cause exists to exceed the maximum sums established in Subsections (3)(b) and (c), the court shall consider:

(i) the extent to which the work done to date and the further work identified by the petitioner duplicates work and investigation performed during the criminal case under review; and

(ii) whether the petitioner has established that the work done to date and the further work identified is reasonably likely to develop evidence or legal arguments that will support postconviction relief.

(f) The court may permit payment in excess of the maximum amounts established in Subsections (3)(b) and (c) only on the petitioner's motion, provided that:

(i) if the court has granted a motion to file ex parte applications under Subsection (3)(d), the petitioner shall serve the motion to exceed the maximum amounts on an assistant attorney general employed in a division other than the one in which the attorney is employed who represents the state in the postconviction case; if the court has not granted a motion to file ex parte applications, then the petitioner must serve the attorney representing the state in the postconviction matter with the motion to exceed the maximum funds;

(ii) if the motion proceeds under Subsection (3)(f)(i), the designated assistant attorney general may not disclose to the attorney representing the state in the postconviction matter any material the petitioner provides in support of the motion except upon a determination by the court that the material is not protected by or that the petitioner has waived the attorney client privilege or work product doctrine; and

(iii) the court gives the state an opportunity to respond to the request for funds in excess of the maximum amounts provided in Subsections (3)(b) and (c).

(4) Nothing in this chapter shall be construed as creating the right to the effective assistance of postconviction counsel, and relief may not be granted on any claim that postconviction counsel was ineffective.

(5) If within 60 days of the request for counsel the court cannot find counsel willing to accept the appointment, the court shall notify the petitioner and the state's counsel in writing. In that event, the petitioner may elect to proceed pro se by serving written notice of that election on the court and state's counsel within 30 days of the court's notice that no counsel could be found. If within 30 days of its notice to the petitioner the court receives no notice that the petitioner elects to proceed pro se, the court shall dismiss any pending postconviction actions and vacate any execution stays, and the state may initiate proceedings under Section 77-19-9 to issue an execution warrant.

(6) Subject to Subsection (2)(a) the court shall appoint counsel to represent the petitioner for the first petition filed after the direct appeal. For all other petitions, counsel may not be appointed at public expense for a petitioner, except to raise claims:

(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or

(b) based on Subsection 78B-9-104(1)(f) that could not have been raised in any previously filed post trial motion or postconviction proceeding.

CHAPTER 166
H. B. 211
Passed February 17, 2011
Approved March 22, 2011
Effective May 10, 2011

COMMUNITY SERVICE MEDICAID PILOT PROGRAM

Chief Sponsor: Ronda Rudd Menlove
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Health Code and creates a pilot program in the state's medical assistance program.

Highlighted Provisions:

This bill:

- requires the state Medicaid program to develop a community service pilot program as part of the state Medicaid plan;
- requires the Medicaid program to present the proposal for a community service pilot program to the Legislature's Health and Human Services Interim Committee; and
- requires the Medicaid program to submit a Medicaid waiver to the Centers for Medicare and Medicaid Services by January 1, 2012, to implement the community service pilot program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
26-18-405, Utah Code Annotated 1953

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

Section 1. Section 26-18-405 is enacted to read:

26-18-405. (Codified as 26-18-406) Medicaid waiver for community service pilot program.

(1) For purposes of this section, "community service pilot program" is a program in which the department:

(a) identifies less than 100 Medicaid recipients who are capable of providing community services to others;

(b) exempts a Medicaid recipient who is not capable of providing community services from the requirements of the community service pilot program;

(c) identifies community services that the department will recognize for purposes of the pilot program; and

(d) requires an individual identified under Subsection (1)(a) who is receiving Medicaid services to perform a certain number of hours of community service as a condition of receiving Medicaid benefits.

(2) (a) The department shall develop a proposal to amend the state Medicaid plan to include a community service pilot program.

(b) The department shall present the proposal for the community service pilot program to the Legislative Health and Human Services Interim Committee on or before November 30, 2011.

(3) The department shall, by January 1, 2012, apply for a Medicaid waiver with the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services to implement a community service pilot program within the state Medicaid plan.

CHAPTER 167
H. B. 216
Passed February 24, 2011
Approved March 22, 2011
Effective May 10, 2011

REUNIFICATION SERVICES AMENDMENTS

Chief Sponsor: Merlynn T. Newbold
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Juvenile Court Act of 1996 relating to the provision of reunification services.

Highlighted Provisions:

This bill:

- defines terms;
- creates a presumption that reunification services should not be provided to a birth mother if the court finds, by clear and convincing evidence, that the child has fetal alcohol syndrome or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the Department of Human Services;
- permits a judge to waive the provisions of this bill under certain circumstances; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-205, as last amended by Laws of Utah 2009, Chapter 161
78A-6-312, as last amended by Laws of Utah 2010, Chapter 322

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

Section 1. Section 62A-4a-205 is amended to read:

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

(i) mental health;

(ii) education; and

(iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

(ii) the child;

(iii) the child's foster parents; and

(iv) if appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;

(c) the primary permanency goal for the child and the reason for selection of that goal;

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and

(k) social summaries that include case history information pertinent to case planning.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312[~~(2)(a)(ii) and (b)~~](3), (6), and (7).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

(i) protect the physical safety of the child;

(ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(i) the child's fear of the parent; and

(ii) the nature of the alleged abuse or neglect.

Section 2. Section 78A-6-312 is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

(2) [~~(a) (i)~~] Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

[~~(A)~~] (a) establish a primary permanency goal for the minor; and

[~~(B)~~] (b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to [~~Subsection (3)~~] Subsections (20) through (22).

[~~(ii)~~] (3) Subject to [~~Subsection (2)(b)~~] Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

[~~(iii) (A)~~] (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

[~~(B)~~] (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

[~~(b) (i)~~] (6) For purposes of Subsection [~~(2)(a)(ii)~~] (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

[~~(A)~~] (a) protect the physical safety of the minor;

[~~(B)~~] (b) protect the life of the minor; or

[~~(C)~~] (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

[~~(ii)~~] (7) Notwithstanding Subsection [~~(2)(a)(ii)~~] (3), a court may not deny parent-time based solely on a parent's failure to:

[~~(A)~~] (a) prove that the parent has not used legal or illegal substances; or

[~~(B)~~] (b) comply with an aspect of the child and family plan that is ordered by the court.

[~~(c) (i)~~] (8) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

[~~(A)~~] (a) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

[~~(B)~~] (b) an explanation of the effect of abandoning or modifying the primary permanency goal.

[~~(ii)~~] (9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

[~~(iii) (A)~~] (10) (a) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

[~~(B)~~] (b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

[~~(C)~~] (c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

[~~(I)~~] (i) 30 days after the day on which the court makes the determination described in this Subsection [~~(2)(c)(iii)(C)~~] (10)(c); or

[~~(II)~~] (ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

[~~(d) (i) (A)~~] (11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

[~~(B)~~] (b) In providing the services described in Subsection [~~(2)(d)(i)(A)~~] (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

[~~(ii)~~] (12) The court shall:

[~~(A)~~] (a) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

[~~(B)~~] (b) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

[~~(C)~~] (c) identify on the record the responsibilities described in Subsection [~~(2)(d)(ii)(B)~~] (12)(b), for the purpose of assisting in any future determination

regarding the provision of reasonable efforts, in accordance with state and federal law.

[~~(iii) (A)~~] (13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

[~~(B)~~] (b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

[~~(iv)~~] (14) (a) If reunification services are ordered, the court may terminate those services at any time.

[~~(v)~~] (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

[~~(A)~~] (i) place the minor in accordance with the permanency plan; and

[~~(B)~~] (ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

[~~(e)~~] (15) Any physical custody of the minor by the parent or a relative during the period described in [~~Subsection (2)(d)~~] Subsections (11) through (14) does not interrupt the running of the period.

[~~(f) (i)~~] (16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

[~~(ii)~~] (b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

[~~(iii)~~] (c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

[~~(g)~~] (17) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:

[~~(i)~~] (a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

[~~(ii)~~] (b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.

[~~(h)~~] (18) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

[~~(i)~~] (a) the court shall terminate reunification services; and

[~~(ii)~~] (b) the division shall petition the court for termination of parental rights.

[~~(i)~~] (19) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

[~~(i)~~] (a) practicable; and

[~~(ii)~~] (b) in accordance with the best interest of the minor.

[~~(3)~~] (20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

[~~(d) (i)~~] (21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

[~~(A)~~] (a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

[~~(B)~~] (b) subject to Subsection [~~(3)(d)(ii)~~] (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

[~~(C)~~] (c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

[~~(I)~~] (i) was removed from the custody of the minor's parent;

[~~(II)~~] (ii) was subsequently returned to the custody of the parent; and

[~~(III)~~] (iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

[~~(D)~~] (d) the parent:

[~~(I)~~] (i) caused the death of another minor through abuse or neglect; or

[~~(II)~~] (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

[~~(Aa)~~] (A) murder or manslaughter of a child; or

[~~(Bb)~~] (B) child abuse homicide;

[~~(E)~~] (e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

[~~(F)~~] (f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

[~~(G)~~] (g) the parent's rights are terminated with regard to any other minor;

[~~(H)~~] (h) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

[~~(I)~~] (i) the parent has abandoned the minor for a period of six months or longer;

[~~(J)~~] (j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located; [~~or~~]

(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

[~~(K)~~] (l) any other circumstance that the court determines should preclude reunification efforts or services.

[~~(ii)~~] (22) (a) The finding under Subsection [~~(3)(d)(i)(B)~~] (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (21)(k) is not warranted.

[~~(4)~~] (23) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

[~~(5)~~] (24) (a) If reunification services are not ordered pursuant to [~~Subsection (3)~~] Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in [~~Subsection (2)~~] Subsections (2) through (19) are not tolled by the parent's absence.

[~~(6)~~] (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection [~~(6)~~] (25)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time [~~limitation~~] limitations imposed in [~~Subsection (2)~~] Subsections (2) through (19).

(d) Reunification services for an institutionalized parent are subject to the time [~~limitation~~] limitations imposed in [~~Subsection (2)~~] Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.

[~~(7)~~] (26) If, pursuant to Subsections [~~(3)(d)(i)(B) through (K)~~] (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

CHAPTER 168
H. B. 224
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

RADIO FREQUENCY IDENTIFICATION

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Interception of Communications Act in the Utah Code of Criminal Procedure by adding an offense relating to implantation of a radio frequency identification tag in a person.

Highlighted Provisions:

This bill:

- provides criminal and civil penalties for requiring, coercing, or compelling a person to undergo the subcutaneous implanting of a radio frequency identification tag.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-23a-4.5, Utah Code Annotated 1953

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

Section 1. Section 77-23a-4.5 is enacted to read:

77-23a-4.5. Implanting an electronic identification device -- Penalties.

(1) A person may not require, coerce, or compel any other individual to undergo or submit to the subcutaneous implanting of a radio frequency identification tag.

(2) Any person who violates Subsection (1) is guilty of a class A misdemeanor.

(3) (a) A person who is implanted with a subcutaneous identification device in violation of Subsection (1) may bring a civil action in any court of competent jurisdiction for actual damages, compensatory damages, punitive damages, injunctive relief, or any combination of these.

(b) The initial civil penalty may not be more than $10,000, and no more than $1,000 for each day the violation continues until the electronic identification device is removed or disabled.

CHAPTER 169
H. B. 240
Passed February 18, 2011
Approved March 22, 2011
Effective May 10, 2011

SOCIAL SERVICES - EMPLOYMENT FIRST PRIORITY

Chief Sponsor: Ronda Rudd Menlove
Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill establishes an employment first priority policy for persons with a disability within the Employment Support Act, State Office of Rehabilitation Act, and the Utah Human Services Code.

Highlighted Provisions:

This bill:

- requires the Department of Workforce Services, the Utah State Office of Rehabilitation, and the Division of Services for People with Disabilities to, when providing services to a person with a disability, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment; and
- requires the entities described in the preceding paragraph to:
  - develop a written plan to implement the policy described in the preceding paragraph; and
  - annually set goals to implement the policy and plan described in this bill, determine whether the goals for the previous year have been met, and modify the plan as needed.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
35A-3-103.5, Utah Code Annotated 1953
53A-24-106.5, Utah Code Annotated 1953
62A-5-103.3, Utah Code Annotated 1953

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

Section 1. Section 35A-3-103.5 is enacted to read:

35A-3-103.5. Employment first emphasis on the provision of services.

(1) When providing services to a person with a disability in the programs provided under this chapter, the department shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law and memorandums of understanding between the department and other state entities that provide services to a person with a disability, give priority to providing services that assist an eligible person in obtaining and retaining meaningful and gainful employment that enables the person to earn sufficient income to:

(a) purchase goods and services;

(b) establish self-sufficiency; and

(c) exercise economic control of the person's life.

(2) The department shall develop a written plan to implement the policy described in Subsection (1) that includes:

(a) assessing the strengths and needs of a person with a disability;

(b) customizing strength-based approaches to obtaining employment;

(c) expecting, encouraging, providing, and rewarding:

(i) integrated employment in the workplace at competitive wages and benefits; and

(ii) self-employment;

(d) developing partnerships with potential employers;

(e) maximizing appropriate employment training opportunities;

(f) coordinating services with other government agencies and community resources;

(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and

(h) arranging sub-minimum wage work or volunteer work for an eligible person when employment at market rates cannot be obtained.

(3) The department shall, on an annual basis:

(a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);

(b) determine whether the goals for the previous year have been met; and

(c) modify the plan described in Subsection (2) as needed.

Section 2. Section 53A-24-106.5 is enacted to read:

53A-24-106.5. Employment first emphasis on the provision of services.

(1) When providing services to a person with a disability under this chapter, the office shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:

(a) purchase goods and services;

(b) establish self-sufficiency; and

(c) exercise economic control of the person's life.

(2) The office shall develop a written plan to implement the policy described in Subsection (1) that includes:

(a) assessing the strengths and needs of a person with a disability;

(b) customizing strength-based approaches to obtaining employment;

(c) setting expectations, providing appropriate services toward, and recognizing success in:

(i) integrated employment in the workplace at competitive wages and benefits; and

(ii) self-employment;

(d) developing partnerships with potential employers;

(e) providing appropriate employment training opportunities;

(f) coordinating services with other government agencies and community resources included in the Workforce Investment System;

(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and

(h) arranging for alternative work experience leading to competitive, integrated employment, including work-based training, volunteer work, and internships.

(3) The office shall, on an annual basis:

(a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);

(b) determine whether the goals for the previous year have been met; and

(c) modify the plan described in Subsection (2) as needed.

Section 3. Section 62A-5-103.3 is enacted to read:

62A-5-103.3. Employment first emphasis on the provision of services.

(1) When providing services to a person with a disability under this chapter, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:

(a) purchase goods and services;

(b) establish self-sufficiency; and

(c) exercise economic control of the person's life.

(2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:

(a) assessing the strengths and needs of a person with a disability;

(b) customizing strength-based approaches to obtaining employment;

(c) expecting, encouraging, providing, and rewarding:

(i) integrated employment in the workplace at competitive wages and benefits; and

(ii) self-employment;

(d) developing partnerships with potential employers;

(e) maximizing appropriate employment training opportunities;

(f) coordinating services with other government agencies and community resources;

(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and

(h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.

(3) The division shall, on an annual basis:

(a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);

(b) determine whether the goals for the previous year have been met; and

(c) modify the plan described in Subsection (2) as needed.

CHAPTER 170
H. B. 251
Passed March 1, 2011
Approved March 22, 2011
Effective May 10, 2011

ALARM SYSTEM AMENDMENTS

Chief Sponsor: Lynn N. Hemingway
Senate Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill modifies a provision of the Utah Construction Trades Licensing Act relating to alarm companies and agents.

Highlighted Provisions:

This bill:

- classifies as unprofessional conduct an alarm company or agent's failure to inform a potential customer about a local jurisdiction's policy on priority levels of responding to an alarm.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-502, as last amended by Laws of Utah 2001, Chapter 198

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

Section 1. Section 58-55-502 is amended to read:

58-55-502. Unprofessional conduct.

Unprofessional conduct includes:

(1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;

(2) disregarding or violating through gross negligence or a pattern of negligence:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of this state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(f) any reporting, notification, and filing laws of this state or the federal government;

(3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

(4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:

(a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or his duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;

(b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;

(c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;

(d) failure to reimburse the Residence Lien Recovery Fund as required by Section 38-11-207;

(e) failure to provide, when applicable, the information required by Section 38-11-108; and

(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;

(5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;

(6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311; [~~or~~]

(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308[~~.~~]; and

(8) the failure of an alarm company or alarm company agent to inform a potential customer, before the customer's purchase of an alarm system or alarm service from the alarm company, of the policy of the county, city, or town within which the customer resides relating to priority levels for responding to an alarm signal transmitted by the alarm system that the alarm company provides the customer.

CHAPTER 171
H. B. 261
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

AMENDMENTS TO TRANSPORTATION PROVISIONS

Chief Sponsor: Derek E. Brown
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to aircraft registrations.

Highlighted Provisions:

This bill:

- requires the Tax Commission to annually provide the Utah Division of Aeronautics a list of all aircraft registered in this state;
- requires an interim committee designated by the Legislative Management Committee to:
  - hear reports from the Department of Transportation and the Tax Commission on aircraft based within the state and aircraft registrations within the state; and
  - study the progress and results of updating the information contained in the statewide database of all aircraft based within the state and the compliance rates for aircraft registrations for aircraft that are based within the state.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-10-110, as last amended by Laws of Utah 2009, Chapters 226 and 358

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 72-10-110 is amended to read:

72-10-110. Aircraft registration information requirements -- Registration fee -- Administration -- Partial year registration.

(1) All applications for aircraft registration shall contain:

(a) a description of the aircraft, including:

(i) the manufacturer or builder;

(ii) the aircraft registration number, type, year of manufacture, or if an experimental aircraft, the year the aircraft was completed and certified for air worthiness by an inspector of the Federal Aviation Administration; and

(iii) gross weight;

(b) the name and address of the owner of the aircraft; and

(c) where the aircraft is located, or the address where the aircraft is usually used or based.

(2) (a) Except as provided in Subsection (3), at the time application is made for registration or renewal of registration of an aircraft under this chapter, an annual registration fee of 0.4% of the average wholesale value of the aircraft shall be paid.

(b) For purposes of calculating the value of the aircraft under Subsection (2)(a) or (3)(d), the Tax Commission shall use the average wholesale value as stated in the Aircraft Bluebook Price Digest.

(3) (a) Notwithstanding Subsection (2), the following aircraft shall pay an annual registration fee of $100:

(i) an aircraft not listed in the Aircraft Bluebook Price Digest; or

(ii) an experimental aircraft.

(b) Notwithstanding Subsection (2), an aircraft 50 years or older shall pay the lesser of:

(i) $100; or

(ii) the uniform fee provided for under Subsection (2)(a).

(c) Notwithstanding Subsection (2), an aircraft that does not have a valid airworthiness certificate for a period of six months or more:

(i) may not apply for a certificate of registration required under Section 72-10-109; and

(ii) is exempt from paying a registration fee until the aircraft has a valid airworthiness certificate.

(d) Notwithstanding Subsection (2), an aircraft shall pay an annual registration fee of .25% of the average wholesale value of the aircraft if:

(i) used by an air charter service for air charter; and

(ii) owned by a person other than the air charter service.

(4) (a) The Tax Commission shall provide a registration card to an owner of an aircraft if:

(i) the owner complies with the registration requirements of this section; and

(ii) the owner of the aircraft states that the aircraft has a valid airworthiness certificate.

(b) An owner of an aircraft shall carry the registration card in the registered aircraft.

(5) The registration fees assessed under this chapter shall be collected by the Tax Commission to be distributed as provided in Subsection (6).

(6) After deducting the costs of administering all aircraft registrations under this chapter, the Tax Commission shall deposit all remaining aircraft registration fees in the Aeronautics Restricted Account created by Section 72-2-126.

(7) Aircraft which are registered under this chapter for less than a full calendar year shall be charged a registration fee which is reduced in proportion to the fraction of the calendar year during which the aircraft is registered in this state.

(8) (a) The Utah Division of Aeronautics shall maintain a statewide database of all aircraft based within the state.

(b) On or before October 1 of each year, the Utah Division of Aeronautics shall provide the Tax Commission with the data the Tax Commission requires from the database described in Subsection (8)(a).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the contents of the database described in Subsection (8)(a).

(d) The Tax Commission shall annually provide the Utah Division of Aeronautics a list of all aircraft registered in this state.

(9) The Tax Commission may suspend or revoke a registration if it determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand.

Section 2. Study.

(1) During the 2011 interim, the Legislative Management Committee shall designate an appropriate interim committee of the Legislature to study the progress and results of updating the information contained in the statewide database of all aircraft based within the state and the compliance rates for aircraft registrations for aircraft that are based within the state.

(2) The Department of Transportation shall report to the designated interim committee on the progress of updating the information contained in the statewide database of all aircraft based within the state maintained by the Division of Aeronautics.

(3) The Tax Commission shall report to the designated interim committee on aircraft registration compliance rates for aircraft that are based within the state.

(4) The designated interim committee shall:

(a) hear the reports required under Subsections (2) and (3); and

(b) consider appropriate legislative remedies for increased enforcement of aircraft registration compliance, including providing compensation to airport operators for the costs of disclosing information regarding aircraft that are based within the state to the Division of Aeronautics.

CHAPTER 172
H. B. 268
Passed March 1, 2011
Approved March 22, 2011
Effective May 10, 2011

MUNICIPAL ENFORCEMENT REGARDING PROPERTY MAINTENANCE

Chief Sponsor: Michael T. Morley
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to a municipality's authority to regulate the inspection and abatement of property.

Highlighted Provisions:

This bill:

- amends provisions related to a municipality's authority to regulate the inspection and abatement of property;
- amends provisions related to a municipal inspector;
- amends notice provisions;
- amends provisions authorizing a municipality to file suit against a property owner or certify costs and expenses with the treasurer of the county; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-11-1, as last amended by Laws of Utah 2003, Chapter 292
10-11-3, as last amended by Laws of Utah 2005, Chapter 69
10-11-4, as last amended by Laws of Utah 1993, Chapter 227

REPEALS AND REENACTS:

10-11-2, as last amended by Laws of Utah 2010, Chapter 378

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

Section 1. Section 10-11-1 is amended to read:

10-11-1. Abatement of weeds, garbage, refuse, and unsightly objects.

A municipal legislative body may:

(1) designate[~~,~~] and regulate the abatement of[~~, injurious and noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures, and may~~]:

(a) the growth and spread of injurious and noxious weeds;

(b) garbage and refuse;

(c) a public nuisance; or

(d) an illegal object or structure; and

(2) appoint a municipal inspector for the purpose of carrying out and in accordance with the provisions of this chapter.

Section 2. Section 10-11-2 is repealed and reenacted to read:

10-11-2. Inspection of property -- Notice.

(1) (a) If a municipality adopts an ordinance describing the duties of a municipal inspector appointed under Section 10-11-1, the ordinance:

(i) may, subject to Subsection (1)(b), direct the inspector to examine and investigate real property for:

(A) the growth and spread of injurious and noxious weeds;

(B) garbage and refuse;

(C) a public nuisance; or

(D) an illegal object or structure; and

(ii) if an inspector conducts an examination and investigation under Subsection (1)(a), shall direct the inspector to deliver written notice of the examination and investigation in accordance with Subsection (2).

(b) An ordinance described in Subsection (1)(a) may not direct an inspector or authorize a municipality to abate conditions solely associated with the interior of a structure, unless required for the demolition and removal of the structure.

(2) (a) (i) The municipal inspector shall serve written notice to a property owner of record according to the records of the county recorder in accordance with Subsection (2)(b).

(ii) The municipal inspector may serve written notice in accordance with Subsection (2)(b) to a non-owner occupant of the property or another person responsible for the property who is not the owner of record, including a manager or agent of the owner, if:

(A) the property owner is not an occupant of the property; and

(B) the municipality in which the property is located has adopted an ordinance imposing a duty to maintain the property on an occupant who is not the property owner of record or a person other than the property owner of record who is responsible for the property.

(b) The municipal inspector may serve the written notice:

(i) in person or by mail to the property owner of record as described in Subsection (2)(a)(i), if mailed to the last-known address of the owner according to the records of the county recorder; or

(ii) in person or by mail to a non-owner occupant or another person responsible for the property who is not the owner of record as described in Subsection (2)(a)(ii), if mailed to the property address.

(c) In the written notice described in Subsection (2)(a), the municipal inspector shall:

(i) identify the property owner of record according to the records of the county recorder;

(ii) describe the property and the nature and results of the examination and investigation conducted in accordance with Subsection (1)(a); and

(iii) require the property owner, occupant, or, if applicable, another person responsible for the property to:

(A) eradicate or destroy and remove any identified item examined and investigated under Subsection (1)(a); and

(B) comply with Subsection (2)(c)(iii)(A) in a time period designated by the municipal inspector but no less than 10 days after the day on which notice is delivered in person or post-marked.

(d) For a notice of injurious and noxious weeds described in Subsection (2)(a), the municipal inspector is not required to make more than one notice for each annual season of weed growth for weeds growing on a property.

(e) The municipal inspector shall serve the notice required under Subsection (2)(a)(i) under penalty of perjury.

Section 3. Section 10-11-3 is amended to read:

10-11-3. Neglect of property owners -- Removal by municipality -- Costs of removal -- Notice -- File action or lien -- Property owner objection.

(1) (a) If [~~any~~] an owner [~~or~~] of, occupant of, or other person responsible for [~~lands~~] real property described in the notice [~~under~~] delivered in accordance with Section 10-11-2 fails [~~or neglects to eradicate, or destroy and remove, the weeds, garbage, refuse, objects, or structure upon the premises in accordance with the notice, the inspector shall~~] to comply with Section 10-11-2, a municipal inspector may:

(i) at the expense of the municipality, employ necessary assistance [~~and cause the weeds, garbage, refuse, objects, or structures to be removed or destroyed~~] to enter the property and destroy or remove an item identified in a written notice described in Section 10-11-2; and

(ii) (A) prepare an itemized statement [~~of all expenses, including administrative expenses, incurred in the removal and destruction of the weeds, garbage, refuse, objects, or structures~~] in accordance with Subsection (1)(b); and

(B) mail to the owner of record according to the records of the county recorder a copy of the statement [~~to the owner~~] demanding payment within 30 days [~~of the date of mailing~~] after the day on which the statement is post-marked.

(b) The statement described in Subsection (1)(a)(ii)(A) shall:

(i) include:

(A) the address of the property described in Subsection (1)(a);

(B) an itemized list of and demand for payment for all expenses, including administrative expenses, incurred by the municipality under Subsection (1)(a)(i); and

(C) the address of the municipal treasurer where payment may be made for the expenses; and

(ii) notify the property owner:

(A) that failure to pay the expenses described in Subsection (1)(b)(i)(B) may result in a lien on the property in accordance with Section 10-11-4;

(B) that the owner may file a written objection to all or part of the statement within 20 days after the day of the statement post-mark; and

(C) where the owner may file the objection, including the municipal office and address.

[~~(b) Each notice under~~] (c) A statement mailed in accordance with Subsection (1)(a) [~~shall be considered~~] is delivered when mailed by certified mail addressed to the property owner's of record last-known address according to the records of the county recorder.

(d) (i) A municipality may file a notice of a lien, including a copy of the statement described in Subsection (1)(a)(ii)(A) or a summary of the statement, in the records of the county recorder of the county in which the property is located.

(ii) If a municipality files a notice of a lien indicating that the municipality intends to certify the unpaid costs and expenses in accordance with Subsection (2)(a)(ii) and Section 10-11-4, the municipality shall file for record in the county recorder's office a release of the lien after all amounts owing are paid.

(2) (a) If [~~the~~] an owner fails to file a timely written objection as described in Subsection (1)(b)(ii)(B) or to [~~make payment of~~] pay the amount set forth in the statement [~~to the municipal treasurer within the required 30 days, the inspector, on behalf of the municipality,~~] under Subsection (1)(b)(i)(B), the municipality may:

[~~(i) cause suit to be brought in an appropriate court of law; or~~]

[~~(ii) refer the matter~~]

(i) file an action in district court; or

(ii) certify the past due costs and expenses to the county treasurer [~~as provided in Subsection (2)(c).~~] of the county in which the property is located in accordance with Section 10-11-4.

(b) If a municipality pursues collection of the costs [~~are pursued through the courts~~] in accordance with Subsection (2)(a)(i) or (4)(a), the municipality may:

(i) sue for and receive judgment [~~upon all of the costs of~~] for all removal and destruction costs, including administrative costs, [~~together with~~] and reasonable [~~attorneys'~~] attorney fees, interest, and court costs; and

(ii) execute on the judgment in the manner provided by law.

[~~(c) If the inspector elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, the inspector shall:~~]

[~~(i) make, in triplicate, an itemized statement of all expenses, including administrative expenses, incurred in the removal and destruction of the weeds, garbage, refuse, objects, or structures; and~~]

[~~(ii) deliver the three copies of the statement to the county treasurer within 10 days after the expiration of the 30-day period provided in the statement under Subsection (1)(a)(ii).~~]

(3) (a) If a property owner files an objection in accordance with Subsection (1)(b)(ii), the municipality shall:

(i) hold a hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) mail or deliver notice of the hearing date and time to the property owner.

(b) At the hearing described in Subsection (3)(a)(i), the municipality shall review and determine the actual cost of abatement, if any, incurred under Subsection (1)(a)(i).

(c) The property owner shall pay any actual cost due after a decision by the municipality at the hearing described in Subsection (3)(a)(i) to the municipal treasurer within 30 days after the day on which the hearing is held.

(4) If the property owner fails to pay in accordance with Subsection (3)(c), the municipality may:

(a) file an action in district court for the actual cost determined under Subsection (3)(b); or

(b) certify the past due costs and expenses to the county treasurer of the county in which the property is located in accordance with Section 10-11-4.

(5) This section does not affect or limit:

(a) a municipal governing body's power to pass an ordinance as described in Section 10-3-702; or

(b) a criminal or civil penalty imposed by a municipality in accordance with Section 10-3-703.

Section 4. Section 10-11-4 is amended to read:

10-11-4. Costs of removal to be included in tax notice.

[~~Upon receipt of the itemized statement of the cost of destroying or removing such weeds, refuse, garbage, objects, or structures, the county treasurer shall forthwith mail one copy to the owner of the land from which the same were removed, together with a notice that objection in writing may be made within 30 days to the whole or any part of the statement so filed to the county legislative body. The county treasurer shall at the same time deliver a copy of the statement to the clerk of the county legislative body. If objections to any statement are filed with the county legislative body, they shall set a date for hearing, giving notice thereof, and upon the hearing fix and determine the actual cost of removing the weeds, garbage, refuse, or unsightly or deleterious objects or structures, and report their findings to the county treasurer. If no objections to the items of the account so filed are made within 30 days of the date of mailing such itemized statement, the county treasurer~~]

(1) A municipality may certify to the treasurer of the county in which a property described in Section 10-11-3 is located, the unpaid costs and expenses that the municipality has incurred under Section 10-11-3 with regard to the property.

(2) If the municipality certifies with the treasurer of the county any costs or expenses incurred for a property under Section 10-11-3, the treasurer shall enter the amount of [~~such statement~~] the costs and expenses on the assessment and tax rolls of the county in the column prepared for that purpose[~~, and likewise within 10 days from the date of the action of the county legislative body upon objections filed shall enter in the prepared column upon the tax rolls the amount found by the county legislative body as the cost of removing and destroying the said weeds, refuse, garbage or unsightly and deleterious objects or structures~~].

(3) If current tax notices have been mailed, [~~said taxes may be carried over~~] the treasurer of the county may carry the costs and expenses described in Subsection (2) on the assessment and tax rolls to the following year.

(4) After [~~the~~] entry by the [~~county~~] treasurer [~~of the costs of removing weeds, garbage, refuse or unsightly and deleterious objects or structures~~] of the county, the amount [~~so~~] entered:

(a) shall have the force and effect of a valid judgment of the district court[~~, and shall be~~];

(b) is a lien upon the [~~lands from which the weeds, refuse, garbage or unsightly and deleterious objects or structures were removed and destroyed,~~] property; and

(c) shall be collected by the [~~county~~] treasurer of the county in which the property is located at the time of the payment of general taxes.

(5) Upon payment [~~thereof~~] of the costs and expenses:

(a) the judgement is satisfied;

(b) the lien is released from the property; and

(c) receipt shall be acknowledged upon the general tax receipt issued by the treasurer.

(6) This section does not apply to any public building, public structure, or public improvement.

CHAPTER 173
H. B. 280
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

STATE AGENCY REALIGNMENT

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:

This bill creates an advisory council in the Governor's Programs Code to study and make recommendations on the consolidation of state agencies to achieve efficiencies in state government.

Highlighted Provisions:

This bill:

- establishes the Advisory Council on Optimizing and Streamlining State Government;
- establishes the membership of the advisory council;
- specifies the duties of the advisory council, which include the study of consolidating state agencies, executive directors of state agencies, and functions of state agencies to achieve efficiencies in services of state government; and
- requires reports to the governor and the Legislature.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:
63I-2-263, as last amended by Laws of Utah 2010, Chapter 224

ENACTS:
63M-12-101, Utah Code Annotated 1953
63M-12-201, Utah Code Annotated 1953
63M-12-202, Utah Code Annotated 1953
63M-12-203, Utah Code Annotated 1953
63M-12-204, Utah Code Annotated 1953
63M-12-301, Utah Code Annotated 1953

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

Section 1. Section 63I-2-263 is amended to read:

63I-2-263. Repeal dates, Title 63A to Title 63M.

(1) Subsection 63G-1-401(5) is repealed on May 10, 2011.

(2) Title 63M, Chapter 12, Advisory Council on Optimizing and Streamlining State Government Act, is repealed January 1, 2012.

Section 2. Section 63M-12-101 is enacted to read:

CHAPTER 12. ADVISORY COUNCIL ON OPTIMIZING AND STREAMLINING STATE GOVERNMENT ACT

Part 1. General Provisions

63M-12-101. Title.

This chapter is known as the "Advisory Council on Optimizing and Streamlining State Government Act."

Section 3. Section 63M-12-201 is enacted to read:

Part 2. Commission Members

63M-12-201. Creation -- Purpose.

(1) There is established the Advisory Council on Optimizing and Streamlining State Government.

(2) (a) The Governor's Office of Planning and Budget shall provide administrative support for the advisory council.

(b) The executive directors of the departments of state government shall provide information to, and services requested by, the advisory council.

Section 4. Section 63M-12-202 is enacted to read:

63M-12-202. Members -- Appointment -- Terms -- Vacancies -- Expenses.

(1) The advisory council shall consist of up to 19 members as follows:

(a) 16 members to be appointed by the governor as follows:

(i) representatives from stakeholders who receive services from state agencies or are regulated by state agencies;

(ii) leaders in the business community; and

(iii) no more than two executive directors of state departments; and

(b) (i) one member from the Senate appointed by the president of the Senate; and

(ii) two members of the House of Representatives appointed by the speaker of the House of Representatives, no more than one of whom may be from the same political party.

(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the remainder of the unexpired term.

(3) A member may not receive compensation or benefits for the member's service.

Section 5. Section 63M-12-203 is enacted to read:

63M-12-203. Qualifications of members.

(1) Members appointed to the advisory council shall have the following qualifications:

(a) a demonstrated record of leadership and involvement; and

(b) a willingness to make a commitment to the furtherance of the purposes of the advisory council.

(2) The advisory council may make recommendations to the governor concerning appointment of members.

Section 6. Section 63M-12-204 is enacted to read:

63M-12-204. Election of chair -- Meetings.

The governor shall appoint a chair, and the council members may appoint other officers from its membership. The advisory council shall meet in regular meetings and may meet at special meetings at the request of the chair or the governor. The advisory council may form subcommittees and involve stake-holders, industry leaders, and others as it determines is appropriate.

Section 7. Section 63M-12-301 is enacted to read:

Part 3. Duties

63M-12-301. Duties.

The advisory council shall:

(1) consider the consolidation of the departments of state government to:

(a) reduce administrative costs associated with running multiple departments of state government;

(b) incorporate management and best business models for a number of cabinet-level members who report to the governor;

(c) streamline services of state departments in a manner that is in the best interest of the state;

(d) improve the efficiency of government; and

(e) reduce the cost of government;

(2) consider the advantages and disadvantages on consolidating departments, agencies or offices;

(3) consider the implementation of department consolidation and internal organizational changes necessary to complete the re-alignment of responsibilities if a consolidation of departments is recommended, including identifying employees and functions that would transfer to a consolidated department, and the organization of offices, boards, and divisions within a consolidated department;

(4) in accordance with Subsection (3), consider plans and options for reorganization and consolidation of state government, with input from stake holders, legislators, the business community, proposals considered during the Legislature's 2011 General Session, and the 2010 Governor's Commission on Optimizing Government; and

(5) (a) provide a report to the governor on or before October 19, 2011; and

(b) report to the Legislature's Government Operations Interim Committee on or before October 19, 2011; and

(c) report to the Legislative Management Committee on or before December 15, 2011.

CHAPTER 174
H. B. 285
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

ASBESTOS REQUIREMENTS

Chief Sponsor: Larry B. Wiley
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill prohibits the Air Quality Board from requiring asbestos testing on residential properties containing four or fewer units.

Highlighted Provisions:

This bill:

- prohibits the Air Quality Board from requiring asbestos testing on residential properties containing four or fewer units.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-2-104, as last amended by Laws of Utah 2009, Chapter 377

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

Section 1. Section 19-2-104 is amended to read:

19-2-104. Powers of board.

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source;

(b) establishing air quality standards;

(c) requiring persons engaged in operations which result in air pollution to:

(i) install, maintain, and use emission monitoring devices, as the board finds necessary;

(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant; and

(iii) provide access to records relating to emissions which cause or contribute to air pollution;

(d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management plans submitted by local education agencies under that act;

(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;

(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;

(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2); and

(i) implementing lead-based paint remediation training, certification, and performance requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3) The board may:

(a) (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of or matter in the administration of this chapter and compel the attendance of witnesses and the production of documents and other evidence, administer oaths and take testimony, and receive evidence as necessary;

(ii) receive a proposed dispositive action from an administrative law judge as provided by Section 19-1-301; and

(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive action; or

(B) return the proposed dispositive action to the administrative law judge for further action as directed;

(b) issue orders necessary to enforce the provisions of this chapter, enforce the orders by appropriate administrative and judicial proceedings, and institute judicial proceedings to secure compliance with this chapter;

(c) settle or compromise any civil action initiated to compel compliance with this chapter and the rules made under this chapter;

(d) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(e) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state;

(f) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(g) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

(h) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(i) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;

(j) monitor the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere in all parts of this state and take appropriate action with respect to them;

(k) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(l) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, and with interested persons or groups;

(m) consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source in the state concerning the efficacy of any proposed control device, or system for this source, or the air pollution problem which may be related to the source, device, or system, but a consultation does not relieve any person from compliance with this chapter, the rules adopted under it, or any other provision of law;

(n) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;

(o) require the owner and operator of each new source which directly emits or has the potential to emit 100 tons per year or more of any air contaminant or the owner or operator of each existing source which by modification will increase emissions or have the potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient to cover the reasonable costs of:

(i) reviewing and acting upon the notice required under Section 19-2-108; and

(ii) implementing and enforcing requirements placed on the sources by any approval order issued pursuant to notice, not including any court costs associated with any enforcement action;

(p) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Sec. 7420;

(q) meet the requirements of federal air pollution laws;

(r) establish work practice, certification, and clearance air sampling requirements for persons who:

(i) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections;

(ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

(iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

(s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as inspectors, management planners, abatement project designers, asbestos abatement contractors and supervisors, or asbestos abatement workers;

(t) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of persons who, prior to establishment of the certification requirements, had received relevant asbestos training, as defined by rule, and had acquired at least 1,000 hours of experience as project monitors;

(u) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;

(v) establish a program to certify private sector air quality permitting professionals (AQPP), as described in Section 19-2-109.5;

(w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

(x) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.

(4) Any rules adopted under this chapter shall be consistent with provisions of federal laws, if any,

relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

(6) The board may not require testing for asbestos or related materials on a residential property with four or fewer units.

CHAPTER 175
H. B. 296
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

HIGHWAY CONSTRUCTION CONTRACT AMENDMENTS

Chief Sponsor: Curtis Oda
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to highway construction contracts on class B or C roads.

Highlighted Provisions:

This bill:

- requires the department to allow a local highway authority to be an additional contracting party for a federal-aid highway construction contract on a class B or C road along with the department in certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

72-6-108.5, Utah Code Annotated 1953

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

Section 1. Section 72-6-108.5 is enacted to read:

72-6-108.5. Class B and C roads -- Federal-aid highway construction contract.

(1) Subject to the requirements of 23 C.F.R. 1.3 and if requested by a local highway authority that is the sponsor of the federal-aid highway construction project, the department shall allow a local highway authority to be an additional contracting party for a federal-aid highway construction contract on a class B or C road along with the department.

(2) If a local highway authority makes a request to be an additional contracting party under Subsection (1), the department may include the local highway authority as an additional bondholder or obligee on the performance bond.

(3) Notwithstanding the provisions of this section, the department shall have the final authority to make decisions relating to a federal-aid highway construction contract on a class B or C road.

CHAPTER 176
H. B. 305
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

MIDTERM VACANCIES IN MUNICIPAL OFFICES

Chief Sponsor: Kraig Powell
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Election Code by amending provisions for filling a vacancy in a municipality.

Highlighted Provisions:

This bill:

- repeals a provision that prohibits a member of a municipal legislative body from participating in the process to fill a vacancy in the mayor position if that member is being considered to fill the vacancy; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-507, as last amended by Laws of Utah 2008, Chapter 19
20A-1-510, as last amended by Laws of Utah 2008, Chapter 19

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

Section 1. Section 10-3-507 is amended to read:

10-3-507. Minimum vote required.

(1) The minimum number of yes votes required to pass any ordinance or resolution, or to take any action by the council, unless otherwise prescribed by law, is a majority of [~~all~~] the voting members of the council, without considering any vacancy in the council.

(2) (a) Any ordinance, resolution, or motion of the council having fewer favorable votes than required in this section is defeated and invalid.

(b) Notwithstanding Subsection (2)(a), a council meeting may be adjourned to a specific time by a majority vote of the council even though the majority vote is less than that required in this section.

(3) A majority of the council members, regardless of number, may fill any vacancy in the council as provided under Section 20A-1-510.

Section 2. Section 20A-1-510 is amended to read:

20A-1-510. Midterm vacancies in municipal offices.

(1) (a) Except as otherwise provided in Subsection (2), if any vacancy occurs in the office of municipal executive or member of a municipal legislative body, the municipal legislative body shall appoint a registered voter in the municipality who meets the qualifications for office established in Section 10-3-301 to fill the unexpired term of the office vacated until the January following the next municipal election.

(b) Before acting to fill the vacancy, the municipal legislative body shall:

(i) give public notice of the vacancy at least two weeks before the municipal legislative body meets to fill the vacancy; and

(ii) identify, in the notice:

(A) the date, time, and place of the meeting where the vacancy will be filled; [~~and~~]

(B) the person to whom a person interested in being appointed to fill the vacancy may submit [~~his~~] the interested person's name for consideration; and [~~any~~]

(C) the deadline for submitting [~~it~~] an interested person's name.

(c) (i) If, for any reason, the municipal legislative body does not fill the vacancy within 30 days after the vacancy occurs, the municipal legislative body shall [~~vote upon~~] fill the vacancy from among the names that have been submitted.

(ii) The two persons having the highest number of votes of the municipal legislative body after a first vote is taken shall appear before the municipal legislative body and the municipal legislative body shall vote again.

(iii) If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body.

(2) (a) A vacancy in the office of municipal executive or member of a municipal legislative body shall be filled by an interim appointment, followed by an election to fill a two-year term, if:

(i) the vacancy occurs, or a letter of resignation is received, by the municipal executive at least 14 days before the deadline for filing for election in an odd-numbered year; and

(ii) two years of the vacated term will remain after the first Monday of January following the next municipal election.

(b) In appointing an interim replacement, the municipal legislative body shall comply with the notice requirements of this section.

[~~(3) A member of a municipal legislative body may not participate in any part of the process established in this section to fill a vacancy if that member is being considered for appointment to fill the vacancy.~~]

[~~(4)~~] (3) (a) In a municipality operating under the council-mayor form of government, as defined in Section 10-3b-102:

(i) the council may appoint a person to fill a vacancy in the office of mayor before the effective date of the mayor's resignation by making the effective date of the appointment the same as the effective date of the mayor's resignation; and

(ii) if a vacancy in the office of mayor occurs before the effective date of an appointment under Subsection (1) or (2) to fill the vacancy, the council chair shall serve as acting mayor during the time between the creation of the vacancy and the effective date of the appointment to fill the vacancy.

(b) While serving as acting mayor under Subsection [~~(4)~~] (3)(a)(ii), the council chair continues to:

(i) act as a council member; and

(ii) vote at council meetings.

CHAPTER 177
H. B. 324
Passed March 7, 2011
Approved March 22, 2011
Effective May 10, 2011

HIV TESTING OF ALLEGED SEX OFFENDERS

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Criminal Code and public health provisions regarding testing of sex offenders for HIV to include alleged sex offenders.

Highlighted Provisions:

This bill:

- provides that a defendant charged with a sex offense shall be tested for HIV upon the request of the victim and in accordance with specified procedures; and
- provides that if the defendant is a minor charged with a sex offense, the minor shall be tested for HIV upon the request of the victim, and in accordance with current law regarding testing of a minor, and in accordance with specified procedures.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-30, as last amended by Laws of Utah 2008, Chapter 339
26A-1-114, as last amended by Laws of Utah 2009, Chapters 304 and 339
76-5-501, as enacted by Laws of Utah 1993, Chapter 40
76-5-502, as enacted by Laws of Utah 1993, Chapter 40
76-5-504, as last amended by Laws of Utah 1997, Chapter 10
77-37-3, as last amended by Laws of Utah 2008, Chapters 339 and 382
78A-6-1104, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 26-1-30 is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard which the department considers to be dangerous, important, or likely to affect the public health;

(e) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;

(f) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs may not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any

laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(o) cooperate with the local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;

(p) investigate the cause of maternal and infant mortality;

(q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(r) provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection (2)(q) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this Subsection (2)(r);

(s) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6a-523, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(u) adopt rules and enforce minimum sanitary standards for the operation and maintenance of:

(i) orphanages;

(ii) boarding homes;

(iii) summer camps for children;

(iv) lodging houses;

(v) hotels;

(vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;

(vii) tourist and trailer camps;

(viii) service stations;

(ix) public conveyances and stations;

(x) public and private schools;

(xi) factories;

(xii) private sanatoria;

(xiii) barber shops;

(xiv) beauty shops;

(xv) physicians' offices;

(xvi) dentists' offices;

(xvii) workshops;

(xviii) industrial, labor, or construction camps;

(xix) recreational resorts and camps;

(xx) swimming pools, public baths, and bathing beaches;

(xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and

(xxii) of any other facilities in public buildings and on public grounds;

(v) conduct health planning for the state;

(w) monitor the costs of health care in the state and foster price competition in the health care delivery system;

(x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(y) license the provision of child care;

(z) accept contributions to and administer the funds contained in the Organ Donation Contribution Fund created in Section 26-18b-101; and

(aa) serve as the collecting agent, on behalf of the state, for the nursing care facility assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act, and adopt rules for the enforcement and administration of the nursing facility assessment consistent with the provisions of Title 26, Chapter 35a.

Section 2. Section 26A-1-114 is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the plumbing code administered by the Division of Occupational and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory

services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law which:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law which are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards;

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;

(o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

(p) provide public health assistance in response to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of [~~convicted~~] alleged sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan which:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance; and

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

(6) Nothing in this part may be construed to authorize a local health department to enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon monoxide detector in a residential dwelling against anyone other than the occupant of the dwelling.

Section 3. Section 76-5-501 is amended to read:

76-5-501. Definitions.

For purposes of this part:

(1) [~~"Convicted"~~] "Alleged sexual offender" means a person or a [~~juvenile as provided in Subsection 76-5-502(1).~~] minor regarding whom an indictment, petition, or an information has been filed or an arrest has been made alleging the commission of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and regarding which:

(a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(b) the judge has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(2) "Department of Health" means the state Department of Health as defined in Section 26-1-2.

(3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(4) "HIV positive individual" means a person who is HIV positive as determined by the State Health Laboratory.

(5) "Local department of health" means the department as defined in Subsection 26A-1-102(5).

(6) "Minor" means a person younger than 18 years of age.

[~~(6)~~] (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).

[~~(7)~~] (8) "Sexual offense" means a violation of state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses.

[~~(8)~~] (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health.

Section 4. Section 76-5-502 is amended to read:

76-5-502. Request for testing -- Mandatory testing -- Liability for costs.

[~~(1) (a) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, a plea of not guilty by reason of insanity or been found guilty for violation of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, or a juvenile who is adjudicated to have violated or attempted to violate state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, shall be required to submit to a mandatory test upon the request of a victim or the parent or legal guardian of the minor victim or victim of a sexual offense within six months of conviction to determine if the offender is an HIV positive individual.~~]

[~~(b) The court shall order the convicted sexual offender to submit to the test upon sentencing or as a condition of probation. The order to the convicted sexual offender shall not include the identity and address of the victim requesting the test. The court shall forward the order to the Department of Health, including separate information about the victim's identity and address for notification and counseling purposes.~~]

(1) (a) An alleged victim of the sexual offense, the parent or guardian of an alleged victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined in Section 62A-3-301 may request that the alleged sexual offender against whom the indictment, information, or petition is filed or regarding whom the arrest has

been made be tested to determine whether the alleged offender is an HIV positive individual.

(b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender be tested, the alleged offender shall submit to being tested not later than 48 hours after an information or indictment is filed or an order requiring a test is signed.

(c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be tested more than 48 hours after an information or indictment is filed, the offender shall submit to being tested not later than 24 hours after the request is made.

(d) As soon as practicable, the results of the test conducted pursuant to this section shall be provided to:

(i) the alleged victim who requested the test;

(ii) the parent or guardian of the alleged victim, if the alleged victim is a minor;

(iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301;

(iv) the alleged offender; and

(v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(e) If follow-up testing is medically indicated, the results of follow-up testing of the defendant shall be sent as soon as practicable to:

(i) the alleged victim;

(ii) the parent or guardian of the alleged victim if the alleged victim is younger than 18 years of age;

(iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as defined in Section 62A-3-301;

(iv) the alleged offender; and

(v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(2) If the mandatory test has not been conducted, and the [~~convicted~~] alleged offender or [~~adjudicated juvenile~~] alleged minor offender is already confined in a county jail, state prison, or a secure youth corrections facility, the [~~person~~] alleged offender shall be tested while in confinement.

(3) The secure youth corrections facility or county jail shall cause the blood specimen of the alleged offender [~~as defined in~~] under Subsection (1) confined in that facility to be taken and shall forward the specimen to the Department of Health.

(4) The Department of Corrections shall cause the blood specimen of the alleged offender defined in Subsection (1) confined in any state prison to be taken and shall forward the specimen to the Department of Health as provided in Section 64-13-36.

(5) The [~~person~~] alleged offender who is tested [~~shall be~~] is responsible upon conviction for the costs of testing, unless the [~~person~~] alleged offender is indigent. The costs will then be paid by the Department of Health from the General Fund.

Section 5. Section 76-5-504 is amended to read:

76-5-504. Victim notification and counseling.

(1) (a) The Department of Health shall provide the victim who requests testing of the [~~convicted~~] alleged sexual offender's human immunodeficiency virus status counseling regarding HIV disease and referral for appropriate health care and support services.

(b) If the local health department [~~where~~] in whose jurisdiction the victim resides and the Department of Health agree, the Department of Health shall forward a report of the [~~convicted~~] alleged sexual offender's human immunodeficiency virus status to the local health department and the local health department shall provide the victim who requests the test with the test results, counseling regarding HIV disease, and referral for appropriate health care and support services.

(2) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department acting pursuant to an agreement made under Subsection (1) may disclose to the victim the results of the [~~convicted~~] alleged sexual offender's human immunodeficiency virus status as provided in this section.

Section 6. Section 77-37-3 is amended to read:

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M,

Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the [~~convicted~~] alleged sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing the victim's current address and telephone number to the criminal justice agencies involved in the case.

Section 7. Section 78A-6-1104 is amended to read:

78A-6-1104. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections 78A-6-103, 78A-6-701, and 78A-6-702 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services.

(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older;

(ii) has been determined to be a serious habitual offender for tracking under Section 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services; or

(iii) is required to provide a DNA specimen under Section 53-10-403.

(b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(3) HIV testing [~~may~~] shall be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim [~~or~~], the parent or guardian of a [~~child~~] victim younger than 14 years of age, or the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301.

(4) HIV testing shall be conducted on a minor against whom a petition has been filed or a pickup order has been issued for commission of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim, the parent or guardian of a victim younger than 14 years of age, or the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301, and regarding which:

(a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(b) the judge has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

[~~(4)~~] (5) HIV tests, photographs, and fingerprints may not be taken of a child younger than 14 years of age without the consent of the court.

[~~(5)~~] (6) (a) Photographs may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies only when a minor 14 years of age or older is charged with an offense which would be a felony if committed by an adult.

(b) Fingerprints may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies.

[~~(6)~~] (7) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.

CHAPTER 178
H. B. 351
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

HOMELESS COORDINATING COMMITTEE MODIFICATIONS

Chief Sponsor: Val L. Peterson
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the membership of the Homeless Coordinating Committee by adding the lieutenant governor as a member and having the lieutenant governor serve as chair of the committee.

Highlighted Provisions:

This bill:

- provides that the membership of the Homeless Coordinating Committee shall include the lieutenant governor;
- provides that the lieutenant governor shall serve as chair of the Homeless Coordinating Committee; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-801, as last amended by Laws of Utah 2010, Chapter 286

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

Section 1. Section 9-4-801 is amended to read:

9-4-801. Creation.

(1) There is created the Homeless Coordinating Committee.

(2) (a) The committee shall consist of:

(i) the lieutenant governor or the lieutenant governor's designee;

(ii) the state planning coordinator[~~,~~] or the coordinator's designee;

(iii) the state superintendent of public instruction[~~,~~] or the superintendent's designee;

(iv) the chair of the board of trustees of the Utah Housing Corporation[~~,~~] or the chair's designee; and

(v) the executive directors of the Department of Human Services, the Department of Corrections, the Department of Community and Culture, the Department of Workforce Services, and the Department of Health, or their designees.

(b) (i) The lieutenant governor shall [~~appoint~~] serve as the chair [~~from among these members~~] of the committee.

(ii) The lieutenant governor may appoint a vice chair from among committee members, who shall conduct committee meetings in the absence of the lieutenant governor.

(3) The governor may [~~also~~] appoint as members of the committee representatives of local governments, local housing authorities, local law enforcement agencies, and of federal and private agencies and organizations concerned with the homeless, mentally ill, elderly, single-parent families, substance abusers, and persons with a disability.

(4) (a) Except as required by Subsection (4)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) A person appointed under this Subsection (4) may not be appointed to serve more than three consecutive terms.

(5) When a vacancy occurs in the membership for any reason, the replacement [~~shall be~~] is appointed for the unexpired term.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

CHAPTER 179
H. B. 370
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

BAIL BOND AMENDMENTS

Chief Sponsor: Gregory H. Hughes
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code and the Code of Criminal Procedure regarding bail surety and bail bond companies.

Highlighted Provisions:

This bill:

- amends the procedure for the court providing notice to the surety when a defendant who has posted bail fails to appear;
- provides that bail will be exonerated in specified cases, including when the defendant appears at the next court hearing and where the court has not scheduled any action in the case within 18 months after the most recent docket activity; and
- provides licensure qualifications, including training and hours of experience, for bail bond sureties and agencies.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-7, as last amended by Laws of Utah 2006, Chapter 332

77-20b-101, as last amended by Laws of Utah 2006, Chapter 332

ENACTS:

31A-35-401.5, Utah Code Annotated 1953

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

Section 1. Section 31A-35-401.5 is enacted to read:

31A-35-401.5. Additional licensure requirements for a bail bond surety company.

(1) A person applying for licensure as a bail bond surety or agency for the first time shall, in addition to the requirements of Section 31A-35-401, provide proof that at least one principal of the bail bond surety or agency will have a minimum of 2,000 hours of experience working as an employee of a bail bond surety company as a licensed bail bond agent.

(2) The applicant shall provide proof of the experience claimed under Subsection (1), including providing:

(a) the exact details of the character and nature of the experience on a form provided by the department;

(b) a statement by each employer verifying the number of hours the applicant worked for the employer; and

(c) (i) federal income reporting forms that account for the wages for hours claimed or documented approval of the claimed hours by the insurance commissioner; and

(ii) the total of 2,000 hours may be proved in part by federal income reporting forms and in part by approval by the insurance commissioner.

(3) The burden of proving the hours of experience as required in this section is upon the applicant.

(4) An individual who is applying for licensure under this chapter for the first time shall have completed a training program of not less than four hours that is approved by the commissioner and includes:

(a) definition of a bail bond, jail procedures regarding bail bonds, court procedures regarding bail bonds, liability of a bail bond, the taking of collateral, returning collateral, trust account separation of funds, fee structure, the 10 percent rule, agent liability, the prohibition on soliciting on county or state property, and the delivery of a bail bond;

(b) state laws and administrative rules regarding the operation of a bail bond business;

(c) the rights of an accused person; and

(d) the ethical requirements of a bail bond business.

(5) (a) On and after January 1, 2012, an applicant for renewal of a license under this chapter shall have completed during the prior year two hours of continuing education.

(b) The insurance commissioner shall implement the continuing education requirement under this Subsection (5) pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 2. Section 77-20-7 is amended to read:

77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration if charges not filed.

(1) (a) [~~The~~] Except as provided in Subsection (1)(b), the principal and the sureties on the written undertaking are liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including the surrender of the defendant [~~in execution of any sentence imposed~~] for sentencing, irrespective of any contrary provision in the undertaking. Any failure of the defendant to appear [~~up to and including execution of sentence~~] when required is a breach of the conditions of the undertaking or bail and subjects it to forfeiture [~~irrespective~~], regardless of whether or not notice of appearance was given to the sureties. Upon sentencing the bond shall be exonerated without motion.

(b) If the sentence includes a commitment to a jail or prison, the bond shall be exonerated when the

defendant appears at the appropriate jail or prison, unless the judge doesn't require the defendant to begin the commitment within seven days, in which case the bond is exonerated upon sentencing.

[~~(b)~~] (c) For purposes of this section, an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.

[~~(c)~~] (d) Any suspended or deferred sentencing is not the responsibility of the surety and the bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.

[~~(d)~~] (e) If a surety issues a bond after the [~~execution of sentence~~] sentencing, the surety is liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including [~~the next execution of~~] the defendant's appearance to commence serving the sentence imposed under Subsection [~~77-20-7~~](1).

(2) If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless the prosecutor requests an extension of time before the end of the 120-day period by:

(a) filing a notice for extension with the court; and

(b) serving the notice for extension upon the sureties and the person or his attorney.

(3) A court may extend bail and conditions of release for good cause.

(4) Subsection (2) does not prohibit the filing of charges against a person at any time.

(5) If the court does not set on a calendar any hearings on a case within 18 months of the last court docket activity on a case, the undertaking of bail is exonerated without motion.

Section 3. Section 77-20b-101 is amended to read:

77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

(1) If a defendant who has posted bail fails to appear before the appropriate court [~~when~~] as required [~~and the court chooses to order forfeiture of the bail~~], the court shall within 30 days of the failure to appear issue a bench warrant that includes the original case number. The court shall also direct that the surety be given notice of the nonappearance. The clerk of the court shall:

(a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety [~~or its agent as listed on the bond~~];

(b) notify the surety [~~or its agent~~] as listed on the bond of the name, address, and telephone number[~~, and fax number~~] of the prosecutor;

(c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a); and

(d) ensure that the name, address, and telephone number of the surety or its agent as listed on the bond is stated on the bench warrant.

(e) mail notice of the failure to appear to the bail agent if the surety is different than the producer's agent.

(2) The prosecutor may mail notice of nonappearance by certified mail, return receipt requested, to the address of the surety [~~or its agent~~] as listed on the bond within 37 days after the date of the defendant's failure to appear.

(3) If notice of nonappearance is not mailed to a surety [~~or its agent~~] as listed on the bond, other than the defendant, in accordance with Subsection (1) or (2), the surety [~~is~~] and its agent are relieved of further obligation under the bond if the surety's current name and address or the current name and address of the surety's agent are on the bail bond in the court's file.

(4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled court appearance, the court may reinstate the bond without further notice to the bond company.

(ii) If the defendant, while in custody, appears on the case for which the bond was posted, the court may not reinstate the bond without the consent of the bond company.

(b) If a defendant fails to appear within seven days after a scheduled court appearance, the court may not reinstate the bond without the consent of the surety.

(c) If the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges[~~, the surety may file a motion with the court to~~] and the court is notified of the arrest, or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of judgment of forfeiture, the court shall exonerate the bond. [~~The surety shall deliver a copy of the motion to the prosecutor.~~]

(d) Unless the court makes a finding of good cause why the bond should not be exonerated, it shall exonerate the bond if:

(i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge is pending;

(ii) the defendant has been released on a bond secured from a subsequent surety for the original charge and the failure to appear;

(iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's

own recognizance, pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release under Section 17-22-5.5;

(iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending, and the payment is in an amount equal to government transportation expenses listed in Section 76-3-201; or

(v) the surety demonstrates by a preponderance of the evidence that:

(A) at the time the surety issued the bond, it had made reasonable efforts to determine that the defendant was legally present in the United States;

(B) a reasonable person would have concluded, based on the surety's determination, that the defendant was legally present in the United States; and

(C) the surety has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.

(e) Under circumstances not otherwise provided for in this section, the court may exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's motion and there is good cause for the bond to be exonerated.

(f) If a surety's bond has been exonerated under this section and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

CHAPTER 180
H. B. 371
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

MOTOR HOME TAXES AND FEES

Chief Sponsor: Don L. Ipson
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill addresses the fee in lieu of property tax on motor homes.

Highlighted Provisions:

This bill:

- addresses the fee in lieu of property tax on motor homes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-2-405.3, as enacted by Laws of Utah 2005, Chapter 217

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

Section 1. Section 59-2-405.3 is amended to read:

59-2-405.3. Uniform statewide fee on motor homes -- Distribution of revenues.

(1) For purposes of this section, "motor home" means:

(a) a motor home, as defined in Section 13-14-102, that is required to be registered with the state; or

(b) a self-propelled vehicle that is:

(i) modified for primary use as a temporary dwelling for travel, recreational, or vacation use; and

(ii) required to be registered with the state.

(2) In accordance with Utah Constitution Article XIII, Section 2, Subsection (6), beginning on January 1, 2006, a motor home is:

(a) exempt from the tax imposed by Section 59-2-103; and

(b) in lieu of the tax imposed by Section 59-2-103, subject to a uniform statewide fee as provided in Subsection (3).

(3) The uniform statewide fee described in Subsection (2)(b) is:

(a) beginning on January 1, 2006, and ending December 31, 2007, 1.25% of the fair market value of the motor home, as established by the commission; and

(b) beginning on January 1, 2008, 1% of the fair market value of the motor home, as established by the commission.

(4) (a) Notwithstanding Section 59-2-407 and subject to Subsection (4)(b), a motor home subject to the uniform statewide fee imposed by this section that is brought into the state shall, as a condition of registration, be subject to the uniform statewide fee unless all property taxes or uniform fees imposed by the state of origin have been paid for the current calendar year.

(b) Subsection (4)(a) does not apply to a motor home that is:

(i) brought into the state for the sole purpose of selling the motor home to a licensed dealer; and

(ii) purchased for resale by a person licensed as a dealer under Section 41-3-201.

(5) (a) Each county shall distribute the revenue collected by the county from the uniform statewide fee imposed by this section to each taxing entity in which each motor home subject to the uniform statewide fee is located in the same proportion in which revenue collected from the ad valorem property tax is distributed.

(b) Each taxing entity described in Subsection (5)(a) that receives revenue from the uniform statewide fee imposed by this section shall distribute the revenue in the same proportion in which revenue collected from the ad valorem property tax is distributed.

(6) An appeal relating to the uniform statewide fee imposed on a motor home by this section shall be filed pursuant to Section 59-2-1005.

CHAPTER 181
H. B. 384
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

VETERANS PREFERENCE AMENDMENTS

Chief Sponsor: Tim M. Cosgrove
Senate Sponsor: Peter C. Knudson
Cosponsors: Jim Bird
Jackie Biskupski
Derek E. Brown
Melvin R. Brown
Jack R. Draxler
Rebecca P. Edwards
Keith Grover
Wayne A. Harper
Lynn N. Hemingway
Don L. Ipson
Bradley G. Last
David Litvack
Carol Spackman Moss
Patrick Painter
Lee B. Perry
Val L. Peterson
Kraig Powell
Holly J. Richardson
Douglas Sagers
Stephen E. Sandstrom
Jennifer M. Seelig
Evan J. Vickers
Christine F. Watkins
Mark A. Wheatley
Larry B. Wiley
Bill Wright

LONG TITLE

General Description:

This bill provides exceptions to professional state licensure for veterans and active duty spouses.

Highlighted Provisions:

This bill:

- provides an exception to state licensure for active duty spouses for some professions provided the spouse holds a license in another recognized jurisdiction and the license is valid and in good standing;
- allows the Department of Health to take military education, training, and experience into consideration when certifying or licensing persons under the Emergency Medical Services System; and
- adds military education and training programs to programs the Division of Occupational and Professional Licensing considers for licensing.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-8a-106, as enacted by Laws of Utah 1999, Chapter 141
58-1-203, as last amended by Laws of Utah 2002, Chapter 241
58-1-307, as last amended by Laws of Utah 2008, Chapter 242

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

Section 1. Section 26-8a-106 is amended to read:

26-8a-106. Waiver of rules.

(1) Upon application, the committee or department may waive the requirements of a rule it has adopted if:

(a) the person applying for the waiver satisfactorily demonstrates that:

(i) the waiver is necessary for a pilot project to be undertaken by the applicant;

(ii) in the particular situation, the requirement serves no beneficial public purpose; or

(iii) circumstances warrant that waiver of the requirement outweighs the public benefit to be gained by adherence to the rule; and

(b) for a waiver granted under Subsection (1)(a)(ii) or (iii), the committee or department:

(i) extends the waiver to similarly situated persons upon application; or

(ii) amends the rule to be consistent with the waiver.

(2) A waiver of education, licensing, or certification requirements may be granted to a veteran, as defined in Section 71-8-1, if the veteran:

(a) provides to the committee or department documentation showing military education and training in the field in which certification or licensure is sought; and

(b) successfully passes any examination required.

[~~(2)~~] (3) No waiver may be granted under this section that is inconsistent with the provisions of this chapter.

Section 2. Section 58-1-203 is amended to read:

58-1-203. Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.

(1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:

(a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;

(b) prescribing license qualifications;

(c) prescribing rules governing applications for licenses;

(d) providing for a fair and impartial method of examination of applicants;

(e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;

(f) establishing advisory peer committees to the board and prescribing their scope of authority; and

(g) establishing conditions for reinstatement and renewal of licenses.

(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing.

Section 3. Section 58-1-307 is amended to read:

58-1-307. Exemptions from licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

(i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and

(ii) the license is current and the spouse is in good standing in the state of licensure.

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt

status, denial of license, or other disciplinary proceedings.

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

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

(a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state[~~. Individuals exempt under this Subsection (4)(a) are exempt from licensure~~] for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

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

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

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

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

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

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

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

(vii) a physician assistant under Chapter 70a, Physician Assistant Act;

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

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

(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and

(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

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

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

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

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

CHAPTER 182
H. B. 400
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

REGULATION OF MINING OPERATIONS

Chief Sponsor: Michael E. Noel
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill amends provisions relating to regulation of mining operations on state and federal land.

Highlighted Provisions:

This bill:

- provides that political subdivisions of the state do not have the authority to regulate mining operations on state and federal land; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-8-5, as last amended by Laws of Utah 1995, Chapter 299

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

Section 1. Section 40-8-5 is amended to read:

40-8-5. Authority to enforce chapter -- Coordination of procedures -- Department of Environmental Quality.

(1) (a) The board and the division have jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.

(b) [~~Any~~] The delegation of authority to [~~any other~~] a state officer, board, division, commission, or agency to administer [~~any or all other laws~~] a law of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter.

(c) Nothing in this chapter[~~, however, shall affect in any way~~] affects the right of [~~the~~] a landowner, or [~~any~~] a public agency having proprietary authority under other provisions of law, to administer lands within the state, to include conditions in [~~any~~] a lease, license, bill of sale, deed, right-of-way, permit, contract, or other instrument, [~~conditions as appropriate, provided that~~] if the conditions are consistent with this chapter and the rules adopted under [~~it~~] this chapter.

(2) (a) [~~Where~~] If federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this chapter, the board and division shall make every effort to have its rules and procedures accepted by the other governing bodies as complying with their respective requirements.

(b) [~~The objective in coordination is~~] The provisions of Subsections (2)(a) and (d) are established to minimize the need for operators and prospective operators to [~~undertake duplicating~~] comply with duplicative, overlapping, or conflicting [~~compliance procedures~~] requirements.

(c) Nothing in this chapter authorizes a political subdivision of the state to impose a condition or restriction on a mining operation located on state or federal land that is not imposed by a federal or state agency on the mining operation.

(d) An ordinance or regulation issued by a political subdivision of the state that is more restrictive than a permit issued under this chapter for a mining operation on state or federal land is unenforceable.

(3) Nothing in this chapter is intended to abrogate or interfere with [~~any~~] the powers or duties of the Department of Environmental Quality.

CHAPTER 183
H. B. 411
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

APPROACHING STATIONARY EMERGENCY VEHICLE AMENDMENTS

Chief Sponsor: Don L. Ipson
Senate Sponsor: John L. Valentine
Cosponsors: Fred C. Cox
Susan Duckworth
Richard A. Greenwood
Lynn N. Hemingway
Neal B. Hendrickson
Lee B. Perry
Marie H. Poulson
Douglas Sagers
Jennifer M. Seelig
Evan J. Vickers
Christine F. Watkins
Mark A. Wheatley
Larry B. Wiley

LONG TITLE

General Description:

This bill modifies the Traffic Code.

Highlighted Provisions:

This bill:

- requires an individual who approaches emergency vehicles in violation of current law to attend a live four hour classroom course or a court traffic school program on defensive driving within 90 days of sentencing or pleading guilty;
- provides a 90 day driver license suspension if an individual fails to attend the course; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-904, as renumbered and amended by Laws of Utah 2005, Chapter 2

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

Section 1. Section 41-6a-904 is amended to read:

41-6a-904. Approaching emergency vehicle -- Necessary signals -- Stationary emergency vehicle -- Duties of respective operators.

(1) Except when otherwise directed by a peace officer, the operator of a vehicle, upon the immediate approach of an authorized emergency vehicle using audible or visual signals under Section 41-6a-212 or 41-6a-1625, shall:

(a) yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and

(b) then stop and remain stopped until the authorized emergency vehicle has passed.

(2) The operator of a vehicle, upon approaching a stationary authorized emergency vehicle that is displaying alternately flashing red, red and white, or red and blue lights, shall:

(a) reduce the speed of the vehicle;

(b) provide as much space as practical to the stationary authorized emergency vehicle; and

(c) if traveling in a lane adjacent to the stationary authorized emergency vehicle and if practical, with due regard to safety and traffic conditions, make a lane change into a lane not adjacent to the authorized emergency vehicle.

(3) The operator of a vehicle, upon approaching a stationary tow truck or highway maintenance vehicle that is displaying flashing amber lights, shall:

(a) reduce the speed of the vehicle; and

(b) provide as much space as practical to the stationary tow truck or highway maintenance vehicle.

(4) This section does not relieve the operator of an authorized emergency vehicle, tow truck, or highway maintenance vehicle from the duty to drive with regard for the safety of all persons using the highway.

(5) (a) In addition to the penalties prescribed under Section 41-6a-202, an individual in violation of this section shall attend a four hour live classroom course on driving safety offered by an entity affiliated with the National Safety Council or a court approved traffic school program on defensive driving.

(b) An individual who fails to provide to the Driver License Division a certificate of attendance of the classroom course required under Subsection (5)(a), within 60 days of sentencing or of pleading guilty, shall have the individual's driver license suspended for a period of 90 days.

CHAPTER 184
H. B. 427
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

HIGHER EDUCATION COMPENSATION APPROPRIATION REALLOCATIONS

Chief Sponsor: Merlynn T. Newbold
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill directs the commissioner of higher education to reallocate $1.5 million appropriated to the eight Utah higher education institutions for compensation.

Highlighted Provisions:

This bill:

- directs the commissioner of higher education to reallocate $1.5 million appropriated to the eight Utah higher education institutions for compensation to ensure that each higher education institution receives the same percentage compensation reduction.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53B-2-108.2, Utah Code Annotated 1953

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

Section 1. Section 53B-2-108.2 is enacted to read:

53B-2-108.2. Appropriation reallocation -- Commissioner reallocation of certain compensation amounts.

Notwithstanding the $1.5 million appropriated for fiscal year 2012 to the eight higher education institutions for compensation in Senate Bill 3, Appropriation Adjustments, 2011 General Session, and Senate Bill 6, State Agency and Higher Education Compensation Appropriations, 2011General Session, the commissioner of higher education shall equalize the money appropriated to each higher education institution for compensation in those bills by removing excess money from some institutions and transferring the money to underfunded institutions so that each higher education institution takes a 0.6% reduction of their cumulative fiscal year 2011 general fund and education fund base appropriation.

CHAPTER 185
H. B. 432
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

NUISANCE AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill clarifies language pertaining to nuisances.

Highlighted Provisions:

This bill:

- makes clarifying amendments to language regarding manufacturing facilities as nuisances; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-1103, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78B-6-1103 is amended to read:

78B-6-1103. Manufacturing facility in operation over three years -- Limited application of restrictions.

(1) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility or operation may not be [~~or become~~] considered a nuisance, private or public, by virtue of any changed [~~conditions in and about its location~~] circumstance in land uses near the facility after it has been in operation for more than three years if the manufacturing facility or operation was not a nuisance at the time it began operation. The manufacturing facility may not increase the condition asserted to be a nuisance. The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.

(2) The provisions of Subsection (1) may not affect or defeat the right of any person to recover damages for any injuries or damage sustained because of any pollution of, or change in the condition of, the waters of any stream or the overflow of the lands of any person.

(3) Any and all ordinances now or [~~hereafter~~] in the future adopted by any county or municipal corporation in which [~~such~~] a manufacturing facility is located[~~,~~] and which makes [~~the~~] its operation [~~thereof~~] a nuisance or providing for an abatement [~~thereof~~] as a nuisance in the circumstances set forth in this section are null and void[~~; provided, however, that the~~]. The provisions of this Subsection (3) [~~shall~~] may not apply whenever a nuisance results from the negligent or improper operation of [~~any such~~] a manufacturing facility.

CHAPTER 186
H. B. 453
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

DOMESTIC VIOLENCE SERVICES

Chief Sponsor: David Clark
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code relating to the investigation of domestic violence by the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- provides that, except to the extent provided by rule made on or after May 10, 2011, the Division of Child and Family Services is not responsible for investigating domestic violence in the presence of a child; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-105, as last amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 62A-4a-105 is amended to read:

62A-4a-105. Division responsibilities.

The division shall:

(1) administer services to minors and families, including child welfare services, domestic violence services, and all other responsibilities that the Legislature or the executive director may assign to the division;

(2) establish standards for all contract providers of out-of-home care for minors and families;

(3) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

(4) provide for the compilation of relevant information, statistics, and reports on child and family service matters in the state;

(5) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(6) promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state. In carrying out the provisions of this Subsection (6), the division shall cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions to develop and administer a broad range of services and supports. The division shall take the initiative in all matters involving the protection of abused or neglected children if adequate provisions have not been made or are not likely to be made, and shall make expenditures necessary for the care and protection of those children, within the division's budget. Except to the extent provided by rule made by the division on or after May 10, 2011, the division is not responsible for investigating domestic violence in the presence of a child as described in Section 76-5-109.1;

(7) provide substitute care for dependent, abused, neglected, and delinquent children, establish standards for substitute care facilities, and approve those facilities;

(8) provide adoption assistance to persons adopting children with special needs under Part 9, Adoption Assistance, of this chapter. The financial support provided under this Subsection (8) may not exceed the amounts the division would provide for the child as a legal ward of the state;

(9) cooperate with the Employment Development Division in the Department of Workforce Services in meeting social and economic needs of individuals eligible for public assistance;

(10) conduct court-ordered home evaluations for the district and juvenile courts with regard to child custody issues. The court shall order either or both parties to reimburse the division for the cost of that evaluation, in accordance with the community rate for that service or with the department's fee schedule rate;

(11) provide noncustodial and in-home preventive services, designed to prevent family breakup, family preservation services, and reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996;

(12) provide protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(13) establish programs and provide services to minors who have been placed in the custody of the division for reasons other than abuse or neglect, pursuant to Section 62A-4a-250;

(14) provide shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996;

(15) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

(16) arrange for and provide training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services. Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods;

(18) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who have a permanency goal of adoption, or for whom a final plan of termination of parental rights has been approved, pursuant to Section 78A-6-314, and promote adoption of those children;

(19) provide protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(20) refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for court-ordered drug screening test. The court shall order the individual to pay all costs of the tests unless:

(a) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(b) the individual is a participant in a drug court; or

(c) the court finds that the individual is impecunious;

(21) have authority to contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(22) perform such other duties and functions as required by law.

CHAPTER 187
H. B. 454
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

STATE HOSPITAL REVISIONS

Chief Sponsor: Bradley G. Last
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Substance Abuse and Mental Health Act relating to the allocation of adult beds at the state hospital to local mental health authorities.

Highlighted Provisions:

This bill:

- requires the Division of Substance Abuse and Mental Health to establish by rule a formula to separately allocate adult beds at the state hospital to local mental health authorities;
- provides that, beginning on May 10, 2011, and ending on June 30, 2011, 152 beds at the state hospital shall be allocated to local mental health authorities under this bill;
- provides that the number of beds allocated under this bill shall be reviewed and adjusted as necessary on July 1, 2011, to restore the number of beds allocated to 212 beds, as funding permits, and on July 1, 2011, and every three years after July 1, 2011, according to the state's population; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-611, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

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

Section 1. Section 62A-15-611 is amended to read:

62A-15-611. Allocation of state hospital beds -- Formula.

(1) As used in this section:

(a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.

(b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.

(2) (a) The [~~board~~] division shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a). Beginning on [~~the effective date of this act and until~~] May 10, 2011, and ending on June 30, [~~2002, 182~~] 2011, 152 beds shall be allocated to local mental health authorities under this section.

(b) The number of beds shall be reviewed and adjusted as necessary:

(i) on July 1, [~~2002~~] 2011, to restore the number of beds allocated to 212 beds as funding permits; and

(ii) on July 1, 2011, and every three years [~~thereafter~~] after July 1, 2011, according to the state's population.

(c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Estimates Committee.

(3) The formula established under Subsection (2) shall provide for allocation of beds based on:

(a) the percentage of the state's adult population located within a mental health catchment area; and

(b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.

(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.

(5) The division shall allocate adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under the formula established under Subsection (2), the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

(6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

CHAPTER 188
S. B. 19
Passed February 7, 2011
Approved March 22, 2011
Effective May 10, 2011

DEPARTMENT OF WORKFORCE SERVICES' REGIONAL WORKFORCE SERVICE AREAS AMENDMENTS

Chief Sponsor: Patricia W. Jones
House Sponsor: James A. Dunnigan
Cosponsors: Mark B. Madsen
Ralph Okerlund

LONG TITLE

General Description:

This bill modifies provisions of the Utah Workforce Services Code related to Regional Workforce Service Areas.

Highlighted Provisions:

This bill:

- replaces regional workforce service areas and councils with economic service areas within the Department of Workforce Services;
- provides that the department's executive director has jurisdiction over each economic service area;
- modifies the composition of the State Council on Workforce Services;
- provides that economic service area directors shall develop economic service area plans;
- provides for advisory groups to assist economic service area directors;
- provides that services previously provided at regional workforce service areas shall be provided in economic service areas through their employment centers; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-1-102, as last amended by Laws of Utah 2002, Chapter 58
35A-1-201, as last amended by Laws of Utah 2002, Chapter 176
35A-1-202, as last amended by Laws of Utah 2005, Chapter 81
35A-1-203, as last amended by Laws of Utah 1997, Chapter 375
35A-1-206, as last amended by Laws of Utah 2010, Chapter 286
35A-1-207, as last amended by Laws of Utah 1997, Chapter 375
35A-2-101, as last amended by Laws of Utah 2000, Chapter 318
35A-2-102, as last amended by Laws of Utah 1997, Chapter 375
35A-2-103, as last amended by Laws of Utah 2010, Chapter 286
35A-2-201, as last amended by Laws of Utah 1998, Chapter 1
35A-2-202, as last amended by Laws of Utah 1999, Chapter 21
35A-2-203, as last amended by Laws of Utah 1998, Chapter 1
35A-3-115, as last amended by Laws of Utah 2010, Chapters 277 and 278

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

Section 1. Section 35A-1-102 is amended to read:

35A-1-102. Definitions.

Unless otherwise specified, as used in this title:

(1) "Client" means an individual who the department has determined to be eligible for services or benefits under:

(a) Chapter 3, Employment Support Act; and

(b) Chapter 5, Training and Workforce Improvement Act.

[~~(2) "Consortium of counties" means an organization composed of all the counties within a regional workforce services area designated under Section 35A-2-101:~~]

[~~(a) in which representatives of county government consisting of county commissioners, county council members, county executives, or county mayors jointly comply with this title in working with the executive director of the department regarding regional workforce services areas; and~~]

[~~(b) (i) that existed as of July 1, 1997; or~~]

[~~(ii) that is created on or after July 1, 1997, with the approval of the executive director.~~]

[~~(3)~~] (2) "Department" means the Department of Workforce Services created in Section 35A-1-103.

(3) "Economic service area" means an economic service area established in accordance with Chapter 2, Economic Service Areas.

(4) "Employment assistance" means services or benefits provided by the department under:

(a) Chapter 3, Employment Support Act; and

(b) Chapter 5, Training and Workforce Improvement Act.

(5) "Employment center" is a location in [~~a regional workforce services~~] an economic service area where the services provided by [~~a regional workforce services~~] an economic service area under Section 35A-2-201 may be accessed by a client.

(6) "Employment counselor" means an individual responsible for developing an employment plan and coordinating the services and benefits under this title in accordance with Chapter 2, [~~Regional Workforce Services~~] Economic Service Areas.

(7) "Employment plan" means a written agreement between the department and a client that describes:

(a) the relationship between the department and the client;

(b) the obligations of the department and the client; and

(c) the result if an obligation is not fulfilled by the department or the client.

(8) "Executive director" means the executive director of the department appointed under Section 35A-1-201.

(9) "Public assistance" means:

(a) services or benefits provided under Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided from the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

[~~(10) "Regional workforce services area" means a regional workforce services area established in accordance with Chapter 2, Regional Workforce Services Areas.~~]

[~~(11)~~] (10) "Stabilization" means addressing the basic living, family care, and social or psychological needs of the client so that the client may take advantage of training or employment opportunities provided under this title or through other agencies or institutions.

Section 2. Section 35A-1-201 is amended to read:

35A-1-201. Executive director -- Appointment -- Removal -- Compensation -- Qualifications -- Responsibilities -- Deputy directors -- Reports.

(1) (a) The chief administrative officer of the department is the executive director, who [~~shall be~~] is appointed by the governor with the consent of the Senate.

(b) The executive director serves at the pleasure of the governor.

(c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(d) The executive director shall be experienced in administration, management, and coordination of complex organizations.

(2) The executive director shall:

(a) administer and supervise the department in compliance with Title 67, Chapter 19, Utah State Personnel Management Act;

(b) supervise and coordinate between the [~~regional workforce services~~] economic service areas and [~~regional~~] directors created under Chapter 2, [~~Regional Workforce Services~~] Economic Service Areas;

(c) coordinate policies and program activities conducted through the divisions and [~~regional workforce services~~] economic service areas of the department;

(d) approve the proposed budget of each division, the Workforce Appeals Board, and each [~~regional workforce services~~] economic service area within the department;

(e) approve all applications for federal grants or assistance in support of any department program; and

(f) fulfill such other duties as assigned by the Legislature or as assigned by the governor that are not inconsistent with this title.

(3) The executive director may appoint deputy or assistant directors to assist the executive director in carrying out the department's responsibilities.

(4) (a) The executive director shall report annually to the Legislature and the governor concerning the operations of the department and the programs that the department administers.

(b) If federal law requires that a report to the governor or Legislature be given concerning the department or a program administered by the department, the executive director or the executive director's designee shall make that report.

(5) The executive director shall at least annually provide for the sharing of information between the advisory councils established under this title.

Section 3. Section 35A-1-202 is amended to read:

35A-1-202. Divisions -- Creation -- Duties -- Workforce Appeals Board, councils, Child Care Advisory Committee, and economic service areas.

(1) There is created within the department the following divisions:

(a) the Employment Development Division to administer the development and implementation of employment assistance programs that are:

(i) related to the operations of the department; and

(ii) consistent with federal and state law;

(b) to administer those services that are not delivered through the [~~regional workforce services~~] economic service areas:

(i) the Workforce Development and Information Division; and

(ii) the Unemployment Insurance Division; and

(c) the Division of Adjudication to adjudicate claims or actions in accordance with this title.

(2) In addition to the divisions created under this section, within the department are the following:

(a) the Workforce Appeals Board created in Section 35A-1-205;

(b) the State Council on Workforce Services created in Section 35A-1-206;

(c) the Employment Advisory Council created in Section 35A-4-502;

(d) the Child Care Advisory Committee created in Section 35A-3-205; and

(e) the [~~regional workforce services areas and councils~~] economic service areas created in accordance with Chapter 2, [~~Regional Workforce Services~~] Economic Service Areas.

Section 4. Section 35A-1-203 is amended to read:

35A-1-203. Executive director -- Jurisdiction over division and economic service area directors -- No jurisdiction over Workforce Appeals Board -- Authority.

(1) The executive director has administrative jurisdiction over each division and [~~regional workforce services~~] economic service area.

(2) To effectuate greater statewide efficiency and local flexibility in the implementation of programs, the executive director shall coordinate with the directors of the divisions and the directors of the [~~regional workforce services~~] economic service areas.

[~~(3) The executive director shall consult with the applicable consortium of counties in developing management systems, administrative processes, and jurisdictions of the regional workforce services area. The management systems, administrative processes, and jurisdictions shall comply with Title 67, Chapter 19, Utah State Personnel Management Act.~~]

[~~(4)~~] (3) To effectuate greater efficiency and economy in the operations of the department, the executive director may:

(a) make changes in personnel and service functions in the divisions and [~~regional workforce services~~] economic service areas under the executive director's administrative jurisdiction; and

(b) authorize designees to perform appropriate responsibilities.

[~~(5)~~] (4) (a) The executive director has no jurisdiction over the Workforce Appeals Board except as provided in Subsection [~~(5)~~] (4)(b).

(b) The executive director shall:

(i) approve the budget of the Workforce Appeals Board;

(ii) provide the necessary staff support to the Workforce Appeals Board; and

(iii) make rules necessary for the operations of the Workforce Appeals Board and the efficiency of the adjudicative process as a whole in accordance with Section 35A-1-303.

[~~(6)~~] (5) To facilitate management of the department, the executive director may establish offices necessary to implement this title or to perform functions such as budgeting, planning, data processing, and personnel administration.

Section 5. Section 35A-1-206 is amended to read:

35A-1-206. State Council on Workforce Services -- Appointment -- Membership -- Terms of members -- Compensation.

(1) There is created a State Council on Workforce Services that shall:

(a) perform the activities described in Subsection (8);

(b) advise on issues requested by the department and the Legislature; and

(c) make recommendations to the department regarding:

(i) the implementation of Chapters 2, [~~Regional Workforce Services~~] Economic Service Areas, 3, Employment Support Act, and 5, Training and Workforce Improvement Act; and

(ii) the coordination of apprenticeship training.

(2) (a) The council shall consist of the following voting members:

[~~(i) each chair of a regional workforce services council appointed under Section 35A-2-103;~~]

(i) a private sector representative from each economic service area as designated by the economic service area director;

(ii) the superintendent of public instruction or the superintendent's designee;

(iii) the commissioner of higher education or the commissioner's designee; and

(iv) the following members appointed by the governor in consultation with the executive director:

(A) four representatives of small employers as defined by rule by the department;

(B) four representatives of large employers as defined by rule by the department;

(C) four representatives of employees or employee organizations, including at least one representative from nominees suggested by public employees organizations;

(D) two representatives of the clients served under this title including community-based organizations;

(E) a representative of veterans in the state; [~~and~~]

(F) the executive director of the Utah State Office of Rehabilitation[~~.~~]; and

(G) the Applied Technology College president.

(b) The following shall serve as nonvoting ex officio members of the council:

(i) the executive director or the executive director's designee;

(ii) a legislator appointed by the governor from nominations of the speaker of the House of Representatives and president of the Senate;

(iii) the executive director of the Department of Human Services;

(iv) the director of the Governor's Office of Economic Development or the director's designee; and

(v) the executive director of the Department of Health.

(3) (a) The governor shall appoint one nongovernmental member from the council [~~to be~~] as the chair of the council.

(b) The chair shall serve at the pleasure of the governor.

(4) (a) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.

(b) A member shall continue to serve until the member's successor has been appointed and qualified.

(c) Except as provided in Subsection (4)(d), as terms of council members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(d) Notwithstanding the requirements of Subsection (4)(c), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately one half of the council is appointed every two years.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) A majority of the voting members constitutes a quorum for the transaction of business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The department shall provide staff and administrative support to the council at the direction of the executive director.

(8) The council shall:

(a) develop a state workforce services plan in accordance with Section 35A-1-207;

(b) review [~~regional workforce services~~] economic service area plans to certify consistency with state policy guidelines;

[~~(c) work cooperatively with regional councils on workforce services to oversee regional workforce services area operations and to ensure that services are being delivered in accordance with regional workforce services plans;~~]

[~~(d) oversee the department's provision of technical assistance to the regional workforce services areas;~~]

[~~(e) evaluate program performance, customer satisfaction, and other indicators to identify program strengths and weaknesses;~~]

[~~(f) based on the evaluation conducted under Subsection (8)(e) develop plans to improve program outcomes;~~]

[~~(g)~~] (c) improve the understanding and visibility of state workforce services efforts through external and internal marketing strategies;

[~~(h)~~] (d) make an annual report of accomplishments to the governor and the Legislature related to the activities of the department;

[~~(i)~~] (e) issue other studies, reports, or documents the council considers advisable that are not required under Subsection (8)[~~(h)~~](d);

[~~(j)~~] (f) coordinate the planning and delivery of workforce development services with public education, higher education, vocational rehabilitation, and human services; and

[~~(k)~~] (g) perform other responsibilities within the scope of workforce services as requested by:

(i) the Legislature;

(ii) the governor; or

(iii) the executive director.

Section 6. Section 35A-1-207 is amended to read:

35A-1-207. State workforce services plan -- Economic service area plans.

(1) The State Council on Workforce Services shall annually develop a state workforce services plan that shall include:

(a) a mechanism for getting consumer and public feedback on department programs in each economic service area;

(b) projected analysis of the workforce needs of employers and clients;

[~~(b)~~] (c) policy standards in programs and process when required by statute or considered necessary by the council that ensure statewide program consistency among [~~regional workforce services~~] economic service areas;

[~~(c)~~] (d) state outcome-based standards for measuring program performance to ensure equitable service to all clients;

[~~(d)~~] (e) state oversight systems to review [~~regional~~] economic service area compliance with state policies;

[~~(e)~~] (f) elements of [~~regional workforce services~~] economic service area plans that relate to statewide initiatives and programs;

[~~(f)~~] (g) strategies to ensure program responsiveness, universal access, unified case management;

[~~(g)~~] (h) strategies to eliminate unnecessary barriers to access services; and

[~~(h)~~] (i) strategies to provide assistance to employees facing employment dislocation and their employers.

(2) (a) [~~Regional councils on workforce services~~] Economic service area directors shall annually develop [~~a regional workforce services~~] an economic service area plan to be followed [~~by the regional director~~] in administering services.

(b) The plan shall include:

[~~(a)~~] (i) a projected analysis of the [~~regional~~] economic service area workforce needs of employers and clients;

[~~(b)~~] (ii) assurances that state policy standards will be incorporated into the [~~regional workforce services~~] economic service area design;

[~~(c) a regional~~] (iii) an economic service area budget outlining administration and customer support and services expenditures;

[~~(d)~~] (iv) the location of employment centers and staff levels to deliver services;

[~~(e)~~] (v) the services to be provided including assessment and support services, job training options, job placement, and employer outreach;

[~~(f)~~] (vi) identification of targeted occupations for which training will be approved;

[~~(g) regional~~] (vii) economic service area outcome-based performance standards that ensure equitable services to all clients;

[~~(h) regional~~] (viii) economic service area oversight processes that include a process to evaluate program effectiveness and develop plans to improve programs;

[~~(i)~~] (ix) internal and external marketing strategies to improve the understanding and visibility of [~~regional workforce service~~] economic service area efforts;

[~~(j)~~] (x) coordination of apprenticeship training; and

[~~(k)~~] (xi) strategies to provide assistance to employees facing employment dislocation and their employers.

[~~(3) For purposes of this section, outcome measures shall:~~]

[~~(a) be based on:~~]

[~~(i) clients;~~]

[~~(ii) quality of service; and~~]

[~~(iii) successful resolution of issues that result in long-term employment for potential employees and a qualified workforce for employers; and~~]

[~~(b) include:~~]

[~~(i) unemployment rates;~~]

[~~(ii) placement rates;~~]

[~~(iii) number of employees placed that are still employed after 12 months; and~~]

[~~(iv) changes in participation in employment assistance programs.~~]

[~~(4) In targeting occupations under Subsection (2)(f), the council shall consider:~~]

[~~(a) wages;~~]

[~~(b) benefits;~~]

[~~(c) the full range of potential employee or employer needs;~~]

[~~(d) economic development initiatives; and~~]

[~~(e) any other issues the council considers appropriate.~~]

Section 7. Section 35A-2-101 is amended to read:

CHAPTER 2. ECONOMIC SERVICE AREAS

35A-2-101. Economic service areas -- Creation.

(1) (a) The executive director [~~jointly with the Utah Association of Counties~~] shall establish [~~regional workforce services~~] economic service areas to furnish the services described in Section 35A-2-201.

(b) In establishing [~~regional workforce services~~] economic service areas, the executive director [~~and the Utah Association of Counties~~] shall seek input from:

(i) state and local government agencies and departments;

(ii) the groups representing public employees;

(iii) employers, business, education, and other entities affected by the structure of the [~~regional workforce services~~] economic service areas; and

(iv) the general public.

(2) In establishing the [~~regional workforce services~~] economic service areas, the executive director [~~and the Utah Association of Counties~~] shall consider:

(a) areas comprised of multiple counties;

(b) the alignment of transportation and other infrastructure or services;

(c) the interdependence of the economy within a geographic area;

(d) the ability to develop regional marketing and economic development programs;

(e) the labor market areas;

(f) the population of the area, as established in the most recent estimate by the Utah Population Estimates Committee;

(g) the number of individuals in the previous year receiving:

(i) services under Chapter 3, Employment Support Act; and

(ii) benefits under Chapter 4, Employment Security Act; and

(h) other factors that relate to the management of the programs administered or that relate to the delivery of services provided under this title.

Section 8. Section 35A-2-102 is amended to read:

35A-2-102. Directors of economic service areas -- Appointment.

(1) The chief officer of each [~~regional workforce services~~] economic service area shall be a director, who [~~shall serve~~] serves as the executive and administrative head of the [~~regional workforce services~~] economic service area.

(2) A director:

(a) shall be appointed [~~jointly~~] by the executive director [~~and all regional councils on workforce services established in the regional workforce services area under Section 35A-2-103~~]; and

(b) may be removed from that position at the will of the executive director.

(3) [~~A~~] An economic service director [~~of a regional workforce services area~~] shall be experienced in administration and possess [~~such~~] additional qualifications as determined by the executive director, and as provided by law.

(4) The director shall[~~: (a)~~] report [~~annually to all regional councils on workforce services established in the regional workforce services area under Section 35A-2-103 concerning~~] on a regular basis to the State Council on Workforce Services on the delivery of services in the [~~regional workforce services~~] economic service area[~~; and~~].

[~~(b) work with the council established in the regional workforce services area under Section 35A-2-103 in developing the regional plan as outlined in Subsection 35A-1-207(2) on:~~]

[~~(i) regional planning priorities;~~]

[~~(ii) training priorities; and~~]

[~~(iii) locations of employment centers.~~]

Section 9. Section 35A-2-103 is amended to read:

35A-2-103. Advisory groups -- Creation.

(1) The [~~executive~~] economic service area director [~~shall jointly with all of the consortium of counties in the regional workforce services area,~~] may establish one or more [~~regional councils on workforce services~~] advisory groups in each [~~regional workforce services~~] economic service area.

(2) An advisory group established under Subsection (1) shall advise the economic service area director as needed on:

(a) the economic service area's planning priorities;

(b) training priorities; and

(c) development of the economic service area plan.

[~~(2) A regional council on workforce services shall:~~]

[~~(a) perform the functions described in Subsection (10);~~]

[~~(b) work with the regional director, the department, the consortium of counties, and the State Council on Workforce Services on issues requested by the director of the regional workforce services area or the department; and~~]

[~~(c) make recommendations to the regional workforce services area and department regarding:~~]

[~~(i) the implementation of Chapters 2, Regional Workforce Services Areas, 3, Employment Support Act, and 5, Training and Workforce Improvement Act; and~~]

[~~(ii) coordination of apprenticeship training.~~]

[~~(3) Unless otherwise specified in this Subsection (3), members of a regional council on workforce services shall be appointed by the consortium of counties that covers the same geographic area as the regional council in the regional workforce services area, in consultation with the regional director, and shall consist of the following:~~]

[~~(a) the voting members who are:~~]

[~~(i) eight representatives of private sector small employers as defined by rule by the department;~~]

[~~(ii) eight representatives of private sector large employers as defined by rule by the department;~~]

[~~(iii) two representatives of employees, including employee organizations and including at least one representative from nominees suggested by public employees organizations in the region;~~]

[~~(iv) two representatives of clients, including community-based organizations;~~]

[~~(v) one representative from organized labor not representing public employees;~~]

[~~(vi) three representatives of county government consisting of county commissioners, county council members, county executives, or county mayors from the counties in the regional workforce services area;~~]

[~~(vii) a representative of public education appointed jointly by the school district superintendents in the region;~~]

[~~(viii) a representative of higher education appointed jointly by the presidents of the institutions of higher education in the region;~~]

[~~(ix) a representative of veterans;~~]

[~~(x) a representative of the Office of Rehabilitation; and~~]

[~~(xi) an individual who works for or is a member of an economic development board or committee of the state or one of its political subdivisions; and~~]

[~~(b) ex officio nonvoting members who are:~~]

[~~(i) a representative of applied technology;~~]

[~~(ii) a representative of the Department of Human Services; and~~]

[~~(iii) a representative of the Department of Health.~~]

[~~(4) The director of the regional workforce services area shall be a nonvoting ex officio member of the council and provide any necessary staff support for the council.~~]

[~~(5) (a) The consortium of counties in the regional workforce services area that appoints the council shall, in consultation with the regional director, appoint a member of the council to be the chair of the council to serve no more than two one-year terms.~~]

[~~(b) The chair shall be a representative of private sector employers.~~]

[~~(6) (a) (i) Except as provided in Subsection (6)(a)(ii), as terms of council members expire, the consortium of counties in the regional workforce services area that appoints the council shall, in consultation with the regional director, appoint each new member or reappointed member to a four-year term.~~]

[~~(ii) Notwithstanding the requirements of Subsection (6)(a)(i), the consortium of counties in the regional workforce services area that appoints the council shall, in consultation with the regional director, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately one half of the council is appointed every two years.~~]

[~~(iii) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.~~]

[~~(b) At the expiration of the term of a council member or if a vacancy occurs on the council, the consortium of counties in the regional workforce services area shall appoint a replacement to the council, in consultation with the regional director.~~]

[~~(c) A member shall continue to serve as a member until the member's successor has been appointed and qualified.~~]

[~~(d) A member is eligible for reappointment.~~]

[~~(e) The consortium of counties in the regional workforce services area that appoints the council shall appoint, in consultation with the regional director, an individual to replace a council member for the remainder of the term of the council member being replaced if the council member:~~]

[~~(i) ceases to be representative as designated by the original appointment; or~~]

[~~(ii) fails to attend three council meetings, if each of the three absences are not excused by the chair prior to or during the meeting.~~]

[~~(7) (a) A majority of the voting members constitutes a quorum for the transaction of business.~~]

[~~(b) Notwithstanding Subsection (7)(a), a majority of the private sector representatives shall be present for business to be transacted.~~]

[~~(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:~~]

[~~(a) Section 63A-3-106;~~]

[~~(b) Section 63A-3-107; and~~]

[~~(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.~~]

[~~(9) The regional council shall annually provide the consortium of counties that appoints the council a written report that shall include the information concerning the elements of the regional plan described in Subsection 35A-2-102(4)(b).~~]

[~~(10) The regional councils on workforce services shall:~~]

[~~(a) determine the locations of employment centers in accordance with Section 35A-2-203;~~]

[~~(b) develop a regional workforce services plan in accordance with Section 35A-1-207;~~]

[~~(c) develop training priorities for the region;~~]

[~~(d) work cooperatively with the State Council on Workforce Services to oversee regional workforce services areas operations and to ensure that services are being delivered in accordance with regional workforce services plans;~~]

[~~(e) address concerns within the regional workforce services area related to apprenticeship training coordination;~~]

[~~(f) coordinate the planning and delivery of workforce development services with public education, higher education, vocational rehabilitation, and human services; and~~]

[~~(g) report annually to the State Council on Workforce Services.~~]

Section 10. Section 35A-2-201 is amended to read:

35A-2-201. Services provided in economic service areas.

(1) [~~Regional workforce services~~] Economic service areas shall:

(a) through [~~its~~] their employment centers, be the primary provider of services and support under Chapter 3, Employment Support Act;

(b) broker or contract for services or training under Chapter 5, Training and Workforce Improvement Act; and

(c) serve as [~~a regional clearinghouse~~] economic service area clearinghouses of information concerning workforce development and services and support available under this title.

(2) (a) In providing, brokering, or contracting for the services or training described in Subsection (1)(b), the [~~regional~~] economic service area director [~~of a regional workforce services area~~], in consultation with the executive director, shall ensure that the [~~regional workforce services~~] economic service area provides, brokers, or contracts for services and training that [~~meets~~] meet the needs of the special needs population in the [~~regional workforce services~~] economic service area.

(b) For purposes of Subsection (2)(a), "special needs population" means individuals who have special employment needs based on factors including race, gender, age, disability, economic status, education, language skills, and work history.

Section 11. Section 35A-2-202 is amended to read:

35A-2-202. Employment counselors -- Specialization -- Employment plan.

(1) [~~At~~] One or more employment counselors shall be employed at each employment center of [~~a regional workforce services~~] an economic service area established under Section 35A-2-101 [~~there shall be employed one or more employment counselors~~].

(2) A client shall be assigned one employment counselor unless a client:

(a) needs only limited services under this title for which expedited procedures are appropriate; or

(b) receives diversion assistance under Section 35A-3-303.

(3) An employment counselor shall:

(a) develop an employment plan jointly with the client; and

(b) coordinate any services provided, brokered, or contracted for by the department to that client.

(4) The employment counselor assigned to a client may be selected because of the employment counselor's experience or knowledge in the benefits or services available under the title that best meet the specific needs of the client and the employment counselor's skills in working with groups of clients to develop plans leading to self-sufficiency.

(5) (a) An employment counselor shall be:

(i) trained in the requirements of and benefits or services provided through employment centers in at least one of the following:

(A) Chapter 3, Employment Support Act; and

(B) Chapter 5, Training and Workforce Improvement Act;

(ii) capable of:

(A) conducting an effective assessment;

(B) negotiating an employment plan; and

(C) providing the necessary encouragement and support to a client; and

(iii) knowledgeable of:

(A) department policies;

(B) relevant law;

(C) current labor market conditions;

(D) education and training programs for adults; and

(E) services and supports available in the community.

(b) At the discretion of the director of [~~a regional workforce services~~] an economic service area, an employment counselor may receive special training in the requirements of or providing services under the statutes listed in Subsection (5)(a)(i).

(6) (a) A client employment plan may include:

(i) services and support necessary for stabilization;

(ii) assessment and training; and

(iii) placement.

(b) The client employment plan shall consider the job opportunities available to the client based on the job market.

(c) The client employment plan shall be outcome-focused.

(7) If a client seeks cash assistance under Chapter 3, Employment Support Act, the assignment of an employment counselor and the creation and implementation of an employment plan shall be consistent with Section 35A-3-304.

Section 12. Section 35A-2-203 is amended to read:

35A-2-203. Employment centers.

(1) In each county within [~~a regional workforce services~~] an economic service area, the [~~regional council on workforce services~~] executive director shall:

(a) designate the location of one or more employment centers, as defined in Section 35A-1-102, in which the services are provided by the department; or

(b) coordinate with the department to establish access to the services provided by the department by means other than an employment center.

(2) An employment center shall provide a comprehensive program of employment services including job placement, job development, stabilization, assessment, and job training through its employment counselors as part of a system of unified case management.

(3) The department may make services that are provided through employment centers under this section accessible through electronic linkage.

Section 13. Section 35A-3-115 is amended to read:

35A-3-115. Public Employment Offices -- Agreements with other authorities -- Federal system accepted -- Appropriation.

(1) (a) The division shall establish and maintain free public employment offices in a manner and in [~~such~~] places as may be necessary for the proper administration of this chapter and for the purposes of performing the functions as are within the purview of the Act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, 48 Stat. 113; U. S. Code, Title 29, Section 49 (c) as amended, hereinafter referred to as the "Wagner-Peyser Act."

(b) The division shall consult with [~~regional councils on workforce services~~] the directors of economic service areas when determining the location of public employment offices.

(c) [~~A~~] The division may locate a public employment office [~~may be located~~] in connection with or as an integrated part of an employment center established under Section 35A-2-203.

(2) (a) The provisions of the Wagner-Peyser Act, 29 U.S.C. 49-49c, 49g, 49h, 49k, and 557, are accepted by this state.

(b) The department is designated and constitutes the agency of this state for the purposes of the act.

(3) (a) For the purpose of establishing and maintaining free public employment offices, and promoting the use of their facilities, the division may enter into agreements with the railroad retirement board, or any other agency of the United States, or of this or any other state, charged with the administration of any law whose purposes are reasonably related to the purposes of this chapter.

(b) As a part of an agreement entered into under Subsection (3)(a), the division may accept money, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed.

CHAPTER 189
S. B. 24
Passed February 17, 2011
Approved March 22, 2011
Effective July 1, 2011

MOTOR VEHICLE DIVISION FEE AMENDMENTS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Julie Fisher

LONG TITLE

General Description:

This bill amends provisions relating to revenue collected from certain Motor Vehicle Division fees.

Highlighted Provisions:

This bill:

- provides that certain license plate fees shall be established in accordance with certain requirements rather than established in statute and provides for the disposition of those fees;
- provides that funds available to the Tax Commission for the purchase and distribution of license plates and decals are nonlapsing;
- creates the Electronic Payment Fee Restricted Account and provides that funds in the account are nonlapsing;
- provides that certain Motor Vehicle Division fees collected to cover the costs of electronic payments shall be deposited in the Electronic Payment Fee Restricted Account; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

41-1a-1201, as last amended by Laws of Utah 2010, Chapters 295 and 391
41-1a-1211, as last amended by Laws of Utah 2009, Chapters 183 and 348
41-1a-1221, as last amended by Laws of Utah 2010, Chapter 391
41-3-604, as last amended by Laws of Utah 2010, Chapter 391
41-22-36, as last amended by Laws of Utah 2010, Chapter 391
63J-1-602.2, as enacted by Laws of Utah 2010, Chapter 265 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 265
72-2-118, as last amended by Laws of Utah 2010, Chapter 391
72-2-124, as last amended by Laws of Utah 2010, Chapter 391
73-18-25, as last amended by Laws of Utah 2010, Chapter 391

ENACTS:

41-1a-121, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 41-1a-121 is enacted to read:

41-1a-121. Electronic Payment Fee Restricted Account.

(1) As used in this section, "account" means the Electronic Payment Fee Restricted Account created by this section.

(2) There is created within the General Fund a restricted account known as the Electronic Payment Fee Restricted Account.

(3) (a) The account shall be funded from the fees imposed and collected under Sections 41-1a-1221, 41-3-604, 41-22-36, and 73-18-25.

(b) The fees described in Subsection (3)(a) shall be paid to the division, which shall deposit them in the account.

(4) The Legislature shall appropriate the funds in the account to the commission to cover the costs of electronic payments.

(5) In accordance with Section 63J-1-602.2, appropriations made to the division from the account are nonlapsing.

Section 2. Section 41-1a-1201 is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) Except as provided in Subsections (3), [~~(5)~~] (6), and [~~(6)~~] (7) and Sections 41-1a-422, 41-1a-1220, 41-1a-1221, and 41-1a-1223 all fees collected under this part shall be deposited in the Transportation Fund.

(3) [~~(a)~~] Funds generated under Subsections 41-1a-1211(1)(b)[~~(i)~~](ii), (6)(b)[~~(i)~~](ii), and (7) and Section 41-1a-1212 may be used by the commission [~~as a dedicated credit~~] to cover the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

[~~(b) Fees for statehood centennial license plates shall be collected and deposited in the Transportation Fund, less production and administrative costs incurred by the commission.~~]

(4) In accordance with Section 63J-1-602.2, all funds available to the commission for the purchase and distribution of license plates and decals are nonlapsing.

[~~(4)~~] (5) Except as provided in Subsection (3) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

[~~(5)~~] (6) (a) Except as provided in Subsection [~~(5)~~] (6)(b), the following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Centennial Highway Fund Restricted Account created under Section 72-2-118:

(i) $10 of the registration fees imposed under Subsections 41-1a-1206(1)(a), (1)(b), (2), and (5);

(ii) $1 of the registration fees imposed under Subsections 41-1a-1206(1)(c)(i), (1)(c)(ii), and (1)(d)(ii);

(iii) $2 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(ii);

(iv) $3 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(i); and

(v) $4.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(i).

(b) When the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the portions of the registration fees deposited under Subsection [~~(5)~~] (6)(a) for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124.

[~~(6)~~] (7) The following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124:

(a) $20 of each registration fee collected under Subsections 41-1a-1206(1)(a), (1)(b), (1)(c), (1)(d)(i), (1)(e)(i), (2)(a), and (5); and

(b) 50 cents of each registration fee collected under Subsection 41-1a-1206(1)(e)(ii).

Section 3. Section 41-1a-1211 is amended to read:

41-1a-1211. License plate fees -- Application fees for issuance and renewal of personalized and special group license plates -- Replacement fee for license plates -- Postage fees.

(1) (a) Except as provided in Subsections (11) and (12), a license plate fee [~~of $5 per set~~] established in accordance with Section 63J-1-504 shall be paid to the division for the issuance of any new license plate under Part 4, License Plates and Registration Indicia.

(b) The license plate fee shall be deposited as follows:

[~~(i) $4 as provided in Section 41-1a-1201; and~~]

[~~(ii)~~] (i) $1 in the Transportation Fund[~~.~~]; and

(ii) the remainder of the fee charged under Subsection (1)(a), as provided in Section 41-1a-1201.

(2) An applicant for original issuance of personalized license plates issued under Section 41-1a-410 shall pay a $50 per set license plate application fee in addition to the fee required in Subsection (1).

(3) Beginning July 1, 2003, a person who applies for a special group license plate shall pay a $5 fee for the original set of license plates in addition to the fee required under Subsection (1).

(4) An applicant for original issuance of personalized special group license plates shall pay the license plate application fees required in Subsection (2) in addition to the license plate fees and license plate application fees established under Subsections (1) and (3).

(5) An applicant for renewal of personalized license plates issued under Section 41-1a-410 shall pay a $10 per set application fee.

(6) (a) [~~A fee of $5 shall be paid to the division~~] The division may charge a fee established under Section 63J-1-504 to recover the costs for the replacement of any license plate issued under Part 4, License Plates and Registration Indicia.

(b) The license plate fee shall be deposited as follows:

[~~(i) $4 as provided in Section 41-1a-1201; and~~]

[~~(ii)~~] (i) $1 in the Transportation Fund[~~.~~]; and

(ii) the remainder of the fee charged under Subsection (6)(a), as provided in Section 41-1a-1201.

(7) The division may charge a fee established under Section 63J-1-504 to recover its costs for the replacement of decals issued under Section 41-1a-418.

(8) The division may charge a fee established under Section 63J-1-504 to recover the cost of issuing stickers under Section 41-1a-416.

(9) In addition to any other fees required by this section, the division shall assess a fee established under Section 63J-1-504 to cover postage expenses if new or replacement license plates are mailed to the applicant.

(10) The fees required under this section are separate from and in addition to registration fees required under Section 41-1a-1206.

(11) (a) An applicant for a license plate issued under Section 41-1a-407 is not subject to the license plate fee under Subsection (1).

(b) An applicant for a Purple Heart special group license plate issued in accordance with Section 41-1a-421 is exempt from the fees under Subsections (1), (3), and (7).

(12) A person is exempt from the fee under Subsection (1) or (6) if the person:

(a) was issued a clean fuel special group license plate in accordance with Section 41-1a-418 prior to the effective date of rules made by the Department of Transportation under Subsection 41-6a-702(5)(b);

(b) beginning on the effective date of rules made by the Department of Transportation authorized under Subsection 41-6a-702(5)(b), is no longer eligible for a clean fuel special group license plate under the rules made by the Department of Transportation; and

(c) upon renewal or reissuance, is required to replace the clean fuel special group license plate with a new license plate.

(13) Until June 30, 2011, a person is exempt from the license plate fee under Subsection (1) or (6) if the person:

(a) was issued a firefighter recognition special group license plate in accordance with Section 41-1a-418 prior to July 1, 2009;

(b) upon renewal of the person's vehicle registration on or after July 1, 2009, is not a contributor to the Firefighter Support Restricted Account as required under Section 41-1a-418; and

(c) is required to replace the firefighter special group license plate with a new license plate in accordance with Section 41-1a-418.

Section 4. Section 41-1a-1221 is amended to read:

41-1a-1221. Fees to cover the cost of electronic payments.

(1) As used in this section:

(a) "Electronic payment" means use of any form of payment processed through electronic means, including credit cards, debit cards, and automatic clearinghouse transactions.

(b) "Electronic payment fee" means the fee assessed to defray:

(i) the charge, discount fee, or processing fee charged by credit card companies or processing agents to process an electronic payment; or

(ii) costs associated with the purchase of equipment necessary for processing electronic payments.

(2) (a) The Motor Vehicle Division may collect an electronic payment fee on all registrations and renewals of registration under Subsections 41-1a-1206(1)(a), (1)(b), and (2).

(b) The fee described in Subsection (2)(a):

(i) shall be imposed regardless of the method of payment for a particular transaction; and

(ii) need not be separately identified from the fees imposed for registration and renewals of registration under Subsections 41-1a-1206(1)(a), (1)(b), and (2).

(3) The division shall establish the fee according to the procedures and requirements of Section 63J-1-504.

(4) A fee imposed under this section:

(a) shall be [~~used by the division as a dedicated credit to cover the costs of electronic payments~~] deposited in the Electronic Payment Fee Restricted Account created by Section 41-1a-121; and

(b) is not subject to Subsection 63J-2-202(2).

Section 5. Section 41-3-604 is amended to read:

41-3-604. Fee to cover the cost of electronic payments.

(1) As used in this section:

(a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

(b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

(2) (a) The division may collect a fee to cover the cost of electronic payments on the following transactions:

(i) each purchase or renewal of a license under Section 41-3-202;

(ii) each purchase of a book of temporary permits under Section 41-3-302;

(iii) each penalty issued for a delinquent temporary permit under Section 41-3-302;

(iv) each purchase of an in-transit permit under Section 41-3-305;

(v) each purchase of a loaded demonstration permit under Section 41-3-502;

(vi) each purchase of a license plate under Section 41-3-503; and

(vii) each purchase of a salvage vehicle buyer license under Section 41-3-202.

(b) The fee described in Subsection (2)(a):

(i) shall be imposed regardless of the method of payment for a particular transaction; and

(ii) need not be separately identified from the fees and penalty described in Subsections (2)(a)(i) through (vii).

(3) The division shall establish the fee under Subsection (2)(a) according to the procedures and requirements of Section 63J-1-504.

(4) A fee imposed under this section:

(a) shall be [~~used by the division as a dedicated credit to cover the costs of electronic payments~~] deposited in the Electronic Payment Fee Restricted Account created by Section 41-1a-121; and

(b) is not subject to Subsection 63J-2-202(2).

Section 6. Section 41-22-36 is amended to read:

41-22-36. Fees to cover the costs of electronic payments.

(1) As used in this section:

(a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

(b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

(2) (a) The Motor Vehicle Division may collect an electronic payment fee on all registrations and renewals of registration under Section 41-22-8.

(b) The fee described in Subsection (2)(a) shall be imposed regardless of the method of payment for a particular transaction.

(3) The division shall establish the fee according to the procedures and requirements of Section 63J-1-504.

(4) A fee imposed under this section:

(a) shall be [~~used by the Motor Vehicle Division as a dedicated credit to cover the costs of electronic payments~~] deposited in the Electronic Payment Fee Restricted Account created by Section 41-1a-121;

(b) is not subject to Subsection 63J-2-202(2); and

(c) need not be separately identified from the fees imposed on registrations and renewals of registration under Section 41-22-8.

Section 7. Section 63J-1-602.2 is amended to read:

63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.

(1) Appropriations from the Technology Development Restricted Account created in Section 31A-3-104.

(2) Appropriations from the Criminal Background Check Restricted Account created in Section 31A-3-105.

(3) Appropriations from the Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(4) Appropriations from the Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

(5) The fund for operating the state's Federal Health Care Tax Credit Program, as provided in Section 31A-38-104.

(6) The Special Administrative Expense Account created in Section 35A-4-506.

(7) Funding for a new program or agency that is designated as nonlapsing under Section 36-24-101.

(8) The Oil and Gas Conservation Account created in Section 40-6-14.5.

(9) The Off-Highway Access and Education Restricted Account created in Section 41-22-19.5.

(10) Funds available to the Tax Commission under Section 41-1a-1201 for the purchase and distribution of license plates and decals.

(11) Appropriations from the Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

Section 8. Section 72-2-118 is amended to read:

72-2-118. Centennial Highway Fund Restricted Account.

(1) There is created a restricted account entitled the Centennial Highway Fund Restricted Account within the Transportation Investment Fund of 2005 created by Section 72-2-124.

(2) The account consists of money generated from the following revenue sources:

(a) any voluntary contributions received for the construction, major reconstruction, or major renovation of state or federal highways;

(b) appropriations made to the fund by the Legislature;

(c) registration fees designated under Subsection 41-1a-1201[~~(5)~~](6)(a); and

(d) the sales and use tax amounts provided for in Section 59-12-103.

(3) (a) The account shall earn interest.

(b) All interest earned on account money shall be deposited into the account.

(4) The executive director may use account money, as prioritized by the Transportation Commission, only to pay the costs of construction, major reconstruction, or major renovation to state and federal highways.

(5) When the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the account as determined by the Executive Appropriations Committee under Subsection (6)(d), the Division of Finance shall transfer any existing balance in the account into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(6) (a) The Division of Finance shall monitor the highway general obligation bonds that are being paid from revenues deposited in the account.

(b) The department shall monitor the highway construction, major reconstruction, or major renovation projects that are being paid from revenues deposited in the account.

(c) Upon request by the Executive Appropriations Committee of the Legislature:

(i) the Division of Finance shall report to the committee the status of all highway general obligation bonds that are being paid from revenues deposited in the account; and

(ii) the department shall report to the committee the status of all highway construction, major reconstruction, or major renovation projects that are being paid from revenues deposited in the account.

(d) The Executive Appropriations Committee of the Legislature shall notify the State Tax Commission, the department, and the Division of Finance when:

(i) all highway general obligation bonds that are intended to be paid from revenues deposited in the account have been paid off; and

(ii) all highway projects that are intended to be paid from revenues deposited in the account have been completed.

(7) (a) The Division of Finance shall, from funds that are deposited into the Centennial Highway Fund Restricted Account, transfer into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of funds certified by the Transportation Commission in accordance with Subsection (7)(b) that are not required to pay:

(i) principal, interest, and issuance costs of bonds issued for projects in the Centennial Highway Program in the current fiscal year; or

(ii) construction or reconstruction costs for projects in the Centennial Highway Program in the current fiscal year.

(b) The Division of Finance shall transfer the amount under Subsection (7)(a) when the Division of Finance receives a written letter from the Transportation Commission certifying the amount of funds available under Subsection (7)(a).

Section 9. Section 72-2-124 is amended to read:

72-2-124. Transportation Investment Fund of 2005.

(1) There is created a special revenue fund entitled the Transportation Investment Fund of 2005.

(2) The fund consists of money generated from the following sources:

(a) any voluntary contributions received for the maintenance, construction, reconstruction, or renovation of state and federal highways;

(b) appropriations made to the fund by the Legislature;

(c) the sales and use tax revenues deposited into the fund in accordance with Section 59-12-103; and

(d) registration fees designated under Subsection 41-1a-1201[~~(6)~~](7).

(3) When the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the fund shall also consist of money generated from the following sources:

(a) registration fees designated under Subsection 41-1a-1201[~~(5)~~](6)(a); and

(b) the sales and use tax amounts provided for in Section 59-12-103.

(4) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(5) (a) Except as provided in Subsection (5)(b), the executive director may use fund money only to pay:

(i) the costs of maintenance, construction, reconstruction, or renovation to state and federal highways prioritized by the Transportation Commission through the prioritization process for new transportation capacity projects adopted under Section 72-1-304;

(ii) the costs of maintenance, construction, reconstruction, or renovation to the highway projects described in Subsection 63B-18-401(2); and

(iii) principal, interest, and issuance costs of bonds authorized by Section 63B-18-401.

(b) The executive director may use fund money to exchange for an equal or greater amount of federal transportation funds to be used as provided in Subsection (5)(a).

(6) (a) Before bonds authorized by Section 63B-18-401 may be issued in any fiscal year, the department and the commission shall appear before the Executive Appropriations Committee of the Legislature and present the amount of bond proceeds that the department needs to provide funding for the projects identified in Subsection 63B-18-401(2) for the next fiscal year.

(b) The Executive Appropriations Committee of the Legislature shall review and comment on the amount of bond proceeds needed to fund the projects.

(7) The Division of Finance shall, from money deposited into the fund, transfer the amount of funds necessary to pay principal, interest, and issuance costs of bonds authorized by Section 63B-18-401 in the current fiscal year to the appropriate debt service or sinking fund.

Section 10. Section 73-18-25 is amended to read:

73-18-25. Fees to cover the costs of electronic payments.

(1) As used in this section:

(a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

(b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

(2) (a) The Motor Vehicle Division may collect an electronic payment fee on all registrations and renewals of registration under Section 73-18-7.

(b) The fee described under Subsection (2)(a) shall be imposed regardless of the method of payment for a particular transaction.

(3) The Motor Vehicle Division shall establish the fee according to the procedures and requirements of Section 63J-1-504.

(4) A fee imposed under this section:

(a) shall be [~~used by the Motor Vehicle Division as a dedicated credit to cover the costs of electronic payments~~] deposited in the Electronic Payment Fee Restricted Account created by Section 41-1a-121;

(b) is not subject to Subsection 63J-2-202(2); and

(c) need not be separately identified from the fees imposed on registrations and renewals of registration under Section 73-18-7.

Section 11. Intent language regarding lapsing of money.

It is the intent of the Legislature that money received by the Tax Commission during fiscal year 2010-11 under the following sections shall be considered dedicated credits and in closing out fiscal year 2010-11 the unspent dedicated credits shall lapse to the Electronic Payment Fee Restricted Account created by Section 41-1a-121 in this bill:

(1) Section 41-1a-1221;

(2) Section 41-3-604;

(3) Section 41-22-36; and

(4) Section 73-18-25.

Section 12. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 190
S. B. 29
Passed February 8, 2011
Approved March 22, 2011
Effective May 10, 2011

UNIFORM DRIVER LICENSE ACT AMENDMENTS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Julie Fisher

LONG TITLE

General Description:

This bill modifies the Uniform Driver License Act by amending provisions relating to driver licenses.

Highlighted Provisions:

This bill:

- provides definitions;
- specifies the procedures and applicability of fees for a person whose license is downgraded or for a person who receives a higher license class than what the person was originally issued during a license cycle that has not expired;
- provides that the Driver License Division may deny a person's license if the person fails to comply with the requirement to downgrade the person's CDL to a class D license;
- provides that a court shall forward to the Driver License Division within five, rather than 10, days an abstract of the court record of the conviction or plea held in abeyance for certain reportable traffic or motorboating violations;
- provides that a person may not drive a commercial motor vehicle if the person has not complied with the medical certification requirements;
- provides that a person may not drive a commercial motor vehicle if the commercial motor vehicle is subject to an out-of-service order;
- provides that beginning on January 30, 2012, an applicant for a CDL, limited-term CDL, or CDIP shall provide a medical certification status;
- provides that a person whose medical certification status is non-excepted interstate shall provide the division an updated medical examiner's certificate upon request by the Driver License Division;
- specifies additional CDL license restrictions;
- provides that an original CDL or a renewal to an original CDL expires on the birth date of the applicant in the first year following the year the license was issued if the applicant is required to register as a sex offender;
- provides that the Driver License Division shall subtract from certain disqualification periods the number of days for which the license was previously disqualified if the previous disqualification was based on the same occurrence upon which the conviction was based;
- requires the Driver License Division to notify the driver licensing authority in the licensing state within five, rather than 10, days when the Driver License Division receives a report of a conviction or plea in abeyance of a nonresident holder of a CDL for certain traffic violations; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-3-102, as last amended by Laws of Utah 2009, Chapters 45, 315, and 356
53-3-109, as last amended by Laws of Utah 2009, Chapter 183
53-3-205, as last amended by Laws of Utah 2010, Chapter 95
53-3-218, as last amended by Laws of Utah 2010, Chapters 157 and 336
53-3-221, as last amended by Laws of Utah 2008, Chapters 322 and 382
53-3-402, as last amended by Laws of Utah 2007, Chapter 53
53-3-404, as last amended by Laws of Utah 2005, Chapter 220
53-3-405, as renumbered and amended by Laws of Utah 1993, Chapter 234
53-3-410, as last amended by Laws of Utah 2009, Chapter 315
53-3-412, as last amended by Laws of Utah 2005, Chapter 220
53-3-413, as last amended by Laws of Utah 2009, Chapter 315
53-3-414, as last amended by Laws of Utah 2010, Chapters 196 and 283
53-3-419, as last amended by Laws of Utah 2006, Chapter 18

ENACTS:

53-3-410.1, Utah Code Annotated 1953

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

Section 1. Section 53-3-102 is amended to read:

53-3-102. Definitions.

As used in this chapter:

(1) "Cancellation" means the termination by the division of a license issued through error or fraud or for which consent under Section 53-3-211 has been withdrawn.

(2) "Class D license" means the class of license issued to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this chapter.

(3) "Commercial driver license" or "CDL" means a license:

(a) issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle; and

(b) that was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-410(1)(i)(i).

(4) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or

used to transport passengers or property if the motor vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport 16 or more passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of Part 4, Uniform Commercial Driver License Act:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a motor carrier for hire;

(iii) firefighting and emergency vehicles; and

(iv) recreational vehicles that are not used in commerce and are driven solely as family or personal conveyances for recreational purposes.

(5) "Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs; or

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(6) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part 4, Proof of Owner's or Operator's Security, do not apply.

(7) "Director" means the division director appointed under Section 53-3-103.

(8) "Disqualification" means either:

(a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of a person's privileges to drive a commercial motor vehicle;

(b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391; or

(c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.

(9) "Division" means the Driver License Division of the department created in Section 53-3-103.

(10) "Downgrade" means to obtain a lower license class than what was originally issued during an existing license cycle.

[~~(10)~~] (11) "Drive" means:

(a) to operate or be in physical control of a motor vehicle upon a highway; and

(b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within the state.

[~~(11)~~] (12) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

[~~(12)~~] (13) "Driving privilege card" means the evidence of the privilege granted and issued under this chapter to drive a motor vehicle to a person whose privilege was obtained without providing evidence of lawful presence in the United States.

[~~(13)~~] (14) "Extension" means a renewal completed in a manner specified by the division.

[~~(14)~~] (15) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

[~~(15)~~] (16) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

[~~(16)~~] (17) "Identification card" means an identification card issued under this chapter to a person whose card was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-804(2)(i)(i).

[~~(17)~~] (18) "Indigent" means that a person's income falls below the federal poverty guideline issued annually by the U.S. Department of Health and Human Services in the Federal Register.

[~~(18)~~] (19) "License" means the privilege to drive a motor vehicle.

[~~(19)~~] (20) (a) "License certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle.

(b) "License certificate" evidence includes a:

(i) regular license certificate;

(ii) limited-term license certificate;

(iii) driving privilege card;

(iv) CDL license certificate; and

(v) limited-term CDL license certificate.

[~~(20)~~] (21) "Limited-term commercial driver license" or "limited-term CDL" means a license:

(a) issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle; and

(b) that was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-410(1)(i)(ii).

[~~(21)~~] (22) "Limited-term identification card" means an identification card issued under this chapter to a person whose card was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-804(2)(i)(ii).

[~~(22)~~] (23) "Limited-term license certificate" means the evidence of the privilege granted and issued under this chapter to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).

[~~(23)~~] (24) "Motorboat" has the same meaning as provided under Section 73-18-2.

[~~(24)~~] (25) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

[~~(25)~~] (26) "Office of Recovery Services" means the Office of Recovery Services, created in Section 62A-11-102.

[~~(26)~~] (27) (a) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle.

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

[~~(27)~~] (28) "Regular license certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle whose privilege was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(A).

[~~(28)~~] (29) "Renewal" means to validate a license certificate so that it expires at a later date.

[~~(29)~~] (30) "Reportable violation" means an offense required to be reported to the division as determined by the division and includes those offenses against which points are assessed under Section 53-3-221.

[~~(30)~~] (31) (a) "Resident" means an individual who:

(i) has established a domicile in this state, as defined in Section 41-1a-202, or regardless of domicile, remains in this state for an aggregate period of six months or more during any calendar year;

(ii) engages in a trade, profession, or occupation in this state, or who accepts employment in other than seasonal work in this state, and who does not commute into the state;

(iii) declares himself to be a resident of this state by obtaining a valid Utah driver license certificate or motor vehicle registration; or

(iv) declares himself a resident of this state to obtain privileges not ordinarily extended to nonresidents, including going to school, or placing children in school without paying nonresident tuition or fees.

(b) "Resident" does not include any of the following:

(i) a member of the military, temporarily stationed in this state;

(ii) an out-of-state student, as classified by an institution of higher education, regardless of whether the student engages in any type of employment in this state;

(iii) a person domiciled in another state or country, who is temporarily assigned in this state, assigned by or representing an employer, religious or private organization, or a governmental entity; or

(iv) an immediate family member who resides with or a household member of a person listed in Subsections [~~(30)~~](31)(b)(i) through (iii).

[~~(31)~~] (32) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.

[~~(32)~~] (33) (a) "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students to and from home and school, or to and from school sponsored events.

(b) "School bus" does not include a bus used as a common carrier as defined in Section 59-12-102.

[~~(33)~~] (34) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.

[~~(34)~~] (35) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

Section 2. Section 53-3-109 is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The division may only disclose personal identifying information:

(i) when the division determines it is in the interest of the public safety to disclose the information; and

(ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(c) The division may disclose personal identifying information:

(i) to a licensed private investigator holding a valid agency license, with a legitimate business need;

(ii) to an insurer, insurance support organization, or a self-insured entity, or its agents, employees, or contractors that issues any motor vehicle insurance under Title 31A, Chapter 22, Part 3, Motor Vehicle Insurance, for use in connection with claims investigation activities, antifraud activities, rating, or underwriting for any person issued a license certificate under this chapter; or

(iii) to a depository institution as defined in Section 7-1-103 for use in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) (a) A person who receives personal identifying information shall be advised by the division that the person may not:

(i) disclose the personal identifying information from that record to any other person; or

(ii) use the personal identifying information from that record for advertising or solicitation purposes.

(b) Any use of personal identifying information by an insurer or insurance support organization, or by a self-insured entity or its agents, employees, or contractors not authorized by Subsection (1)(c)(ii) is:

(i) an unfair marketing practice under Section 31A-23a-402; or

(ii) an unfair claim settlement practice under Subsection 31A-26-303(3).

(3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing driving risk on the insurer's current motor vehicle insurance policyholders.

(b) The disclosure under Subsection (3)(a) shall:

(i) include the licensed driver's name, driver license number, date of birth, and an indication of whether the driver has had a moving traffic violation that is a reportable violation, as defined under Section 53-3-102 during the previous month;

(ii) be limited to the records of drivers who, at the time of the disclosure, are covered under a motor vehicle insurance policy of the insurer; and

(iii) be made under a contract with the insurer or a designee of an insurer.

(c) The contract under Subsection (3)(b)(iii) shall specify:

(i) the criteria for searching and compiling the driving records being requested;

(ii) the frequency of the disclosures;

(iii) the format of the disclosures, which may be in bulk electronic form; and

(iv) a reasonable charge for the driving record disclosures under this Subsection (3).

(4) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person;

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63J-1-504 for each document authenticated; and

(c) charge reasonable fees established in accordance with the procedures and requirements of Section 63J-1-504 for disclosing personal identifying information under Subsection (1)(c).

(5) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(6) (a) A driving record furnished under this section may only report on the driving record of a person for a period of 10 years.

(b) Subsection (6)(a) does not apply to court or law enforcement reports [~~and to~~], reports of commercial driver license violations, or reports for commercial driver license holders.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to designate:

(a) what information shall be included in a report on the driving record of a person;

(b) the form of a report or copy of the report which may include electronic format;

(c) the form of a certified copy, as required under Section 53-3-216, which may include electronic format;

(d) the form of a signature required under this chapter which may include electronic format;

(e) the form of written request to the division required under this chapter which may include electronic format;

(f) the procedures, requirements, and formats for disclosing personal identifying information under Subsection (1)(c); and

(g) the procedures, requirements, and formats necessary for the implementation of Subsection (3).

Section 3. Section 53-3-205 is amended to read:

53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.

(1) An application for any original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six months of the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application and fees for a commercial class A, B, or C license entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the knowledge test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(6) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(7) (a) Except as provided under Subsections (7)(f), (g), and (h), an original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) Except as provided under Subsections (7)(f), (g), and (h), a renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f) and (g), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) A regular license certificate and any endorsement to the regular license certificate held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States or by an immediate family member or dependent who is residing outside of the state, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person's orders have been terminated or the person has been discharged, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(f) A limited-term license certificate or a renewal to a limited-term license certificate expires:

(i) on the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided under this Subsection (7), whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term license certificate was issued if there is no definite end to the individual's period of authorized stay.

(g) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was issued or renewed.

(h) An original license or a renewal to an original license expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, each applicant shall:

(i) provide the applicant's:

(A) full legal name;

(B) birth date;

(C) gender;

(D) (I) documentary evidence of the applicant's valid Social Security number;

(II) written proof that the applicant is ineligible to receive a Social Security number;

(III) temporary identification number (ITIN) issued by the Internal Revenue Service for a person who:

(Aa) does not qualify for a Social Security number; and

(Bb) is applying for a driving privilege card; or

(IV) other documentary evidence approved by the division; and

(E) Utah residence address as documented by a form or forms acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b);

(ii) provide evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(A) that a person is:

(I) a United States citizen;

(II) a national; or

(III) a legal permanent resident alien; or

(B) of the applicant's:

(I) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(II) pending or approved application for asylum in the United States;

(III) admission into the United States as a refugee;

(IV) pending or approved application for temporary protected status in the United States;

(V) approved deferred action status; or

(VI) pending application for adjustment of status to legal permanent resident or conditional resident;

(iii) provide a description of the applicant;

(iv) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(v) state whether the applicant has ever had any license suspended, cancelled, revoked, disqualified, or denied in the last 10 years, or whether the applicant has ever had any license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(vi) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);

(vii) state whether the applicant is required to register as a sex offender under Section 77-27-21.5;

(viii) state whether the applicant is a military veteran and does or does not authorize sharing the information with the state Department of Veterans' Affairs;

(ix) provide all other information the division requires; and

(x) sign the application which signature may include an electronic signature as defined in Section 46-4-102.

(b) Each applicant shall have a Utah residence address, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b).

(c) Each applicant shall provide evidence of lawful presence in the United States in accordance with Subsection (8)(a)(ii), unless the application is for a driving privilege card.

(d) The division shall maintain on its computerized records an applicant's:

(i) (A) Social Security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(D)(IV) applies; and

(ii) indication whether the applicant is required to register as a sex offender under Section 77-27-21.5.

(9) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

[~~(10) (a) Except as provided in Subsection (10)(b), when an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled.~~]

[~~(b) A disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.~~]

(10) (a) Except as provided in Subsection (10)(c), if an applicant receives a license in a higher class than what the applicant originally was issued:

(i) the license application shall be treated as an original application; and

(ii) license and endorsement fees shall be assessed under Section 53-3-105.

(b) An applicant that receives a downgraded license in a lower license class during an existing license cycle that has not expired:

(i) may be issued a duplicate license with a lower license classification for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(22) if a duplicate license is issued under Subsection (10)(b)(i).

(c) An applicant who has received a downgraded license in a lower license class under Subsection (10)(b):

(i) may, when eligible, receive a duplicate license in the highest class previously issued during a license cycle that has not expired for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(22) if a duplicate license is issued under Subsection (10)(c)(i).

(11) (a) When an application is received from a person previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3-105.

(13) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) The indication of intent under Subsection (8)(a)(vi) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all persons who under Subsection (8)(a)(vi) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans' Affairs the names and addresses of all persons who indicate their status as a veteran under Subsection (8)(a)(viii).

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(vi) or(viii), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

(18) A person who knowingly fails to provide the information required under Subsection (8)(a)(vii) is guilty of a class A misdemeanor.

Section 4. Section 53-3-218 is amended to read:

53-3-218. Court to report convictions and may recommend suspension of license -- Severity of speeding violation defined.

(1) As used in this section, "conviction" means conviction by the court of first impression or final administrative determination in an administrative traffic proceeding.

(2) (a) Except as provided in Subsection (2)(c), a court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within [~~10~~] five days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motorboating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(b) When the division receives a court record of a conviction or plea in abeyance for a motorboat violation, the division may only take action against a person's driver license if the motorboat violation is for a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(c) (i) A court is not required to forward to the division within [~~10~~] five days an abstract of the court record of the conviction for a violation described in Subsection 53-3-220(1)(c) and the Driver License Division is not required to suspend a person's license for a violation described in Subsection 53-3-220(1)(c) if:

(A) the violation did not involve a motor vehicle; and

(B) the person convicted of a violation described in Subsection 53-3-220(1)(c):

(I) is participating in or has successfully completed substance abuse treatment at a licensed substance abuse treatment program that is

approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105; or

(II) is participating in or has successfully completed probation through the Department of Corrections Adult Probation and Parole in accordance with Section 77-18-1.

(ii) If the person convicted of a violation described in Subsection 53-3-220(1)(c) fails to comply with the terms of a substance abuse treatment program under Subsection (2)(c)(i)(B)(I) or the terms of probation under Subsection (2)(c)(i)(B)(II):

(A) the substance abuse treatment program licensed by the Division of Substance Abuse and Mental Health or the Department of Corrections Adult Probation and Parole shall immediately provide an affidavit or other sworn information to the court notifying the court that the person has failed to comply with the terms of a substance abuse treatment program under Subsection (2)(c)(i)(B)(I) or the terms of probation under Subsection (2)(c)(i)(B)(II);

(B) upon receipt of an affidavit or sworn statement under Subsection (2)(c)(ii)(A), the court shall immediately forward an abstract of the court record of the conviction for a violation described in Subsection 53-3-220(1)(c) to the division; and

(C) the division shall immediately suspend the person's license in accordance with Subsection 53-3-220(1)(c).

(3) The abstract shall be made in the form prescribed by the division and shall include:

(a) the name, date of birth, and address of the party charged;

(b) the license certificate number of the party charged, if any;

(c) the registration number of the motor vehicle or motorboat involved;

(d) whether the motor vehicle was a commercial motor vehicle;

(e) whether the motor vehicle carried hazardous materials;

(f) whether the motor vehicle carried 16 or more occupants;

(g) whether the driver presented a commercial driver license;

(h) the nature of the offense;

(i) whether the offense involved an accident;

(j) the driver's blood alcohol content, if applicable;

(k) if the offense involved a speeding violation:

(i) the posted speed limit;

(ii) the actual speed; and

(iii) whether the speeding violation occurred on a highway that is part of the interstate system as defined in Section 72-1-102;

(l) the date of the hearing;

(m) the plea;

(n) the judgment or whether bail was forfeited; and

(o) the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

(4) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate the convicted person's license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

(5) Upon a conviction for a violation of the prohibition on using a handheld wireless communication device for text messaging or electronic mail communication while operating a moving motor vehicle under Section 41-6a-1716, a judge may order a suspension of the convicted person's license for a period of three months.

(6) Upon a conviction for a violation of careless driving under Section 41-6a-1715 that causes or results in the death of another person, a judge may order a revocation of the convicted person's license for a period of one year.

Section 5. Section 53-3-221 is amended to read:

53-3-221. Offenses which may result in denial, suspension, disqualification, or revocation of license without hearing -- Additional grounds for suspension -- Point system for traffic violations -- Notice and hearing -- Reporting of traffic violation procedures.

(1) By following the emergency procedures in Title 63G, Chapter 4, Administrative Procedures Act, the division may immediately deny, suspend, disqualify, or revoke the license of any person without hearing and without receiving a record of the person's conviction of crime when the division has been notified or has reason to believe the person:

(a) has committed any offenses for which mandatory suspension or revocation of a license is required upon conviction under Section 53-3-220;

(b) has, by reckless or unlawful driving of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person, or serious property damage;

(c) is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the highways;

(d) has committed a serious violation of the motor vehicle laws of this state;

(e) has knowingly acquired, used, displayed, or transferred an item that purports to be an authentic driver license certificate issued by a governmental entity if the item is not an authentic driver license

certificate or has permitted an unlawful use of the license as prohibited under Section 53-3-229; or

(f) has been convicted of serious offenses against traffic laws governing the movement of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

(2) (a) The division may suspend the license of a person under Subsection (1) when the person has failed to comply with the terms stated on a traffic citation issued in this state, except this Subsection (2) does not apply to highway weight limit violations or violations of law governing the transportation of hazardous materials.

(b) This Subsection (2) applies to parking and standing violations only if a court has issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy the terms of the citation.

(c) (i) This Subsection (2) may not be exercised unless notice of the pending suspension of the driving privilege has been sent at least 10 days previously to the person at the address provided to the division.

(ii) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of a suspension that occurred as a result of failure to comply with the terms stated on a traffic citation.

(3) (a) The division may suspend the license of a person under Subsection (1) when the division has been notified by a court that the person has an outstanding unpaid fine, an outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a court.

(b) The suspension remains in effect until the division is notified by the court that the order has been satisfied.

(c) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of the suspension.

(4) The division shall make rules establishing a point system as provided for in this Subsection (4).

(a) (i) The division shall assign a number of points to each type of moving traffic violation as a measure of its seriousness.

(ii) The points shall be based upon actual relationships between types of traffic violations and motor vehicle traffic accidents.

(b) Every person convicted of a traffic violation shall have assessed against the person's driving record the number of points that the division has assigned to the type of violation of which the person has been convicted, except that the number of points assessed shall be decreased by 10% if on the abstract of the court record of the conviction the court has graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the court has graded the severity of violation as maximum.

(c) (i) A separate procedure for assessing points for speeding offenses shall be established by the division based upon the severity of the offense.

(ii) The severity of a speeding violation shall be graded as:

(A) "minimum" for exceeding the posted speed limit by up to 10 miles per hour;

(B) "intermediate" for exceeding the posted speed limit by from 11 to 20 miles per hour; and

(C) "maximum" for exceeding the posted speed limit by 21 or more miles per hour.

(iii) Consideration shall be made for assessment of no points on minimum speeding violations, except for speeding violations in school zones.

(d) (i) Points assessed against a person's driving record shall be deleted for violations occurring before a time limit set by the division.

(ii) The time limit may not exceed three years.

(iii) The division may also delete points to reward violation-free driving for periods of time set by the division.

(e) (i) By publication in two newspapers having general circulation throughout the state, the division shall give notice of the number of points it has assigned to each type of traffic violation, the time limit set by the division for the deletion of points, and the point level at which the division will generally take action to deny or suspend under this section.

(ii) The division may not change any of the information provided above regarding points without first giving new notice in the same manner.

(5) (a) (i) Upon denying or suspending the license of a person under this section, the division shall immediately notify the licensee in a manner specified by the division and afford him an opportunity for a hearing in the county where the licensee resides.

(ii) The hearing shall be documented, and the division or its authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee.

(iii) One or more members of the division may conduct the hearing, and any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.

(iv) After the hearing the division shall either rescind its order of denial or suspension, extend the denial or suspension of the license, or revoke the license.

(b) The denial or suspension of the license remains in effect pending qualifications determined by the division regarding a person:

(i) whose license has been denied or suspended following reexamination;

(ii) who is incompetent to drive a motor vehicle;

(iii) who is afflicted with mental or physical infirmities that might make him dangerous on the highways; or

(iv) who may not have the necessary knowledge or skill to drive a motor vehicle safely.

(6) (a) Subject to Subsection (6)(d), the division shall suspend a person's license when the division receives notice from the Office of Recovery Services that the Office of Recovery Services has ordered the suspension of the person's license.

(b) A suspension under Subsection (6)(a) shall remain in effect until the division receives notice from the Office of Recovery Services that the Office of Recovery Services has rescinded the order of suspension.

(c) After an order of suspension is rescinded under Subsection (6)(b), a report authorized by Section 53-3-104 may not contain any evidence of the suspension.

(d) (i) If the division suspends a person's license under this Subsection (6), the division shall, upon application, issue a temporary limited driver license to the person if that person needs a driver license for employment, education, or child visitation.

(ii) The temporary limited driver license described in this section:

(A) shall provide that the person may operate a motor vehicle only for the purpose of driving to or from the person's place of employment, education, or child visitation;

(B) shall prohibit the person from driving a motor vehicle for any purpose other than a purpose described in Subsection (6)(d)(ii)(A); and

(C) shall expire 90 days after the day on which the temporary limited driver license is issued.

(iii) (A) During the period beginning on the day on which a temporary limited driver license is issued under this Subsection (6), and ending on the day that the temporary limited driver license expires, the suspension described in this Subsection (6) only applies if the person who is suspended operates a motor vehicle for a purpose other than employment, education, or child visitation.

(B) Upon expiration of a temporary limited driver license described in this Subsection (6)(d):

(I) a suspension described in Subsection (6)(a) shall be in full effect until the division receives notice, under Subsection (6)(b), that the order of suspension is rescinded; and

(II) a person suspended under Subsection (6)(a) may not drive a motor vehicle for any reason.

(iv) The division is not required to issue a limited driver license to a person under this Subsection (6)(d) if there are other legal grounds for the suspension of the person's driver license.

(v) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this part.

(7) (a) The division may suspend or revoke the license of any resident of this state upon receiving notice of the conviction of that person in another state of an offense committed there that, if committed in this state, would be grounds for the suspension or revocation of a license.

(b) The division may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle or motorboat of any offense under the motor vehicle laws of this state, forward a certified copy of the record to the motor vehicle administrator in the state where the person convicted is a resident.

(8) (a) The division may suspend or revoke the license of any nonresident to drive a motor vehicle in this state for any cause for which the license of a resident driver may be suspended or revoked.

(b) Any nonresident who drives a motor vehicle upon a highway when the person's license has been suspended or revoked by the division is guilty of a class C misdemeanor.

(9) (a) The division may not deny or suspend the license of any person for a period of more than one year except:

(i) for failure to comply with the terms of a traffic citation under Subsection (2);

(ii) upon receipt of a second or subsequent order suspending juvenile driving privileges under Section 53-3-219;

(iii) when extending a denial or suspension upon receiving certain records or reports under Subsection 53-3-220(2);

(iv) for failure to give and maintain owner's or operator's security under Section 41-12a-411; [~~or~~]

(v) when the division suspends the license under Subsection (6)[~~.~~]; or

(vi) when the division denies the license under Subsection (14).

(b) The division may suspend the license of a person under Subsection (2) until the person shows satisfactory evidence of compliance with the terms of the traffic citation.

(10) (a) By following the emergency procedures in Title 63G, Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of any person without hearing and without receiving a record of the person's conviction for a crime when the division has reason to believe that the person's license was granted by the division through error or fraud or that the necessary consent for the license has been withdrawn or is terminated.

(b) The procedure upon suspension is the same as under Subsection (5), except that after the hearing the division shall either rescind its order of suspension or cancel the license.

(11) (a) The division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon notice in a manner specified by the division of at least five days to the licensee require him to submit to an examination.

(b) Upon the conclusion of the examination the division may suspend or revoke the person's license, permit him to retain the license, or grant a license subject to a restriction imposed in accordance with Section 53-3-208.

(c) Refusal or neglect of the licensee to submit to an examination is grounds for suspension or revocation of the licensee's license.

(12) (a) Except as provided in Subsection (12)(b), a report authorized by Section 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in this state if the conviction was for a speed of 10 miles per hour or less, above the posted speed limit and did not result in an accident, unless authorized in a manner specified by the division by the individual whose report is being requested.

(b) The provisions of Subsection (12)(a) do not apply for:

(i) a CDL license holder; or

(ii) a violation that occurred in a commercial motor vehicle.

(13) (a) By following the emergency procedures in Title 63G, Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of a person if it has reason to believe that the person is the owner of a motor vehicle for which security is required under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, and has driven the motor vehicle or permitted it to be driven within this state without the security being in effect.

(b) The division may immediately suspend a driving privilege card holder's driving privilege card if the division receives notification from the Motor Vehicle Division that:

(i) the driving privilege card holder is the registered owner of a vehicle; and

(ii) the driving privilege card holder's vehicle registration has been revoked under Subsection 41-1a-110(2)(a)(ii)(A).

(c) Section 41-12a-411 regarding the requirement of proof of owner's or operator's security applies to persons whose driving privileges are suspended under this Subsection (13).

(d) If the division exercises the right of immediate suspension granted under this Subsection (13), the notice and hearing provisions of Subsection (5) apply.

(e) A person whose license suspension has been sustained or whose license has been revoked by the division under this Subsection (13) may file a request for agency action requesting a hearing.

(14) The division may deny an individual's license if the person fails to comply with the requirement to downgrade the person's CDL to a class D license under Section 53-3-410.1.

[~~(14)~~] (15) Any suspension or revocation of a person's license under this section also disqualifies any license issued to that person under Part 4, Uniform Commercial Driver License Act[~~, of this chapter~~].

Section 6. Section 53-3-402 is amended to read:

53-3-402. Definitions.

As used in this part:

(1) "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means the number of grams of alcohol per:

(a) 100 milliliters of blood;

(b) 210 liters of breath; or

(c) 67 milliliters of urine.

(3) "Commercial driver instruction permit" or "CDIP" means a permit issued under Section 53-3-408.

(4) "Commercial driver license information system" or "CDLIS" means the information system established under Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, as a clearinghouse for information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6), and includes all substances listed on the current Schedules I through V of 21 C.F.R., Part 1308 as they may be revised from time to time.

(6) "Employee" means any driver of a commercial motor vehicle, including:

(a) full-time, regularly employed drivers;

(b) casual, intermittent, or occasional drivers;

(c) leased drivers; and

(d) independent, owner-operator contractors while in the course of driving a commercial motor vehicle who are either directly employed by or under lease to an employer.

(7) "Employer" means any individual or person including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns an individual to drive a commercial motor vehicle.

(8) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term of more than one year.

(9) "Foreign jurisdiction" means any jurisdiction other than the United States or a state of the United States.

(10) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle or GVWR of a combination or articulated vehicle, and includes the GVWR of the power unit plus the total weight of all towed units and the loads on those units.

(11) "Hazardous material" has the same meaning as defined under 49 U.S.C. Sec. 5101 et seq., Hazardous Materials Transportation Act.

(12) "Imminent hazard" means the existence of a condition, practice, or violation that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment is expected to occur immediately, or before the condition, practice, or violation can be abated.

(13) "Medical certification status" means the medical certification of a commercial driver license holder or commercial motor vehicle operator in any of the following categories:

(a) Non-excepted interstate. A person shall certify that the person:

(i) operates or expects to operate in interstate commerce;

(ii) is both subject to and meets the qualification requirements under 49 C.F.R. Part 391; and

(iii) is required to obtain a medical examiner's certificate under 49 C.F.R. Part 391.45.

(b) Excepted interstate. A person shall certify that the person:

(i) operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 C.F.R. Part 391; and

(ii) is not required to obtain a medical examiner's certificate under 49 C.F.R. 391.45.

(c) Non-excepted intrastate. A person shall certify that the person:

(i) operates only in intrastate commerce; and

(ii) is subject to state driver qualification requirements under Sections 53-3-303.5, 53-3-304, and 53-3-414.

(d) Excepted intrastate. A person shall certify that the person:

(i) operates in intrastate commerce; and

(ii) engages exclusively in transportation or operations excepted from all parts of the state driver qualification requirements.

[~~(13)~~] (14) "NDR" means the National Driver Register.

[~~(14)~~] (15) "Nonresident CDL" means a commercial driver license issued by a state to an individual who resides in a foreign jurisdiction.

[~~(15)~~] (16) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

[~~(16)~~] (17) "Port-of-entry agent" has the same meaning as provided in Section 72-1-102.

[~~(17)~~] (18) "Serious traffic violation" means a conviction of any of the following:

(a) speeding 15 or more miles per hour above the posted speed limit;

(b) reckless driving as defined by state or local law;

(c) improper or erratic traffic lane changes;

(d) following the vehicle ahead too closely;

(e) any other motor vehicle traffic law which arises in connection with a fatal traffic accident;

(f) operating a commercial motor vehicle without a CDL or a CDIP;

(g) operating a commercial motor vehicle without the proper class of CDL or CDL endorsement for the type of vehicle group being operated or for the passengers or cargo being transported; or

(h) operating a commercial motor vehicle without a CDL or CDIP license certificate in the driver's possession in violation of Section 53-3-404.

[~~(18)~~] (19) "State" means a state of the United States, the District of Columbia, any province or territory of Canada, or Mexico.

[~~(19)~~] (20) "United States" means the 50 states and the District of Columbia.

Section 7. Section 53-3-404 is amended to read:

53-3-404. Requirements to drive commercial motor vehicle.

(1) A person may not drive a commercial motor vehicle, unless the person has been issued and is in immediate possession of:

(a) a CDL license certificate valid for the commercial motor vehicle the person is driving; or

(b) a valid CDIP license certificate in accordance with Section 53-3-408.

(2) (a) A licensee shall display a CDL or CDIP license certificate upon demand of a justice court judge, a peace officer, a special function officer, a port-of-entry officer, or a designee of the division.

(b) It is a defense to a charge under this section that the person charged produces in court a CDL or CDIP license certificate that is issued to the person and valid at the time of the citation or arrest.

(3) A person may not drive a commercial motor vehicle if the person's privilege to drive a commercial motor vehicle is:

(a) suspended, revoked, or canceled;

(b) subject to a disqualification; [~~or~~]

(c) subject to an out-of-service order[~~.~~]; or

(d) not medically certified as defined in Section 53-3-402.

(4) A person may not drive a commercial motor vehicle if the commercial motor vehicle is subject to an out-of-service order.

Section 8. Section 53-3-405 is amended to read:

53-3-405. Authority to drive commercial motor vehicle in Utah.

(1) A person who holds or is required to hold a CDL may drive a commercial motor vehicle in this state if:

(a) the person has a CDL issued by any state in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses;

(b) the person's license is not denied, suspended, revoked, or canceled[~~, or disqualified~~]; [~~and~~]

(c) [~~he~~] the person is not disqualified from driving a commercial motor vehicle[~~.~~]; and

(d) the person has a valid medical certification status.

(2) This section supersedes any provision to the contrary.

Section 9. Section 53-3-410 is amended to read:

53-3-410. Applicant information required for CDIP and CDL -- State resident to have state CDL.

(1) The application for a CDL, limited-term CDL, or CDIP shall include the following information regarding the applicant:

(a) full legal name;

(b) current mailing address;

(c) Utah residential address, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b);

(d) physical description, including sex, height, weight, and eye color;

(e) date of birth;

(f) documentary evidence of the applicant's valid Social Security number;

(g) a complete list of all states in which the applicant was issued a driver license in the previous 10 years;

(h) the applicant's signature; [~~and~~]

(i) evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(i) that a person is:

(A) a United States Citizen;

(B) a national; or

(C) a legal permanent resident alien; or

(ii) of the applicant's:

(A) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(B) pending or approved application for asylum in the United States;

(C) admission into the United States as a refugee;

(D) pending or approved application for temporary protected status in the United States;

(E) approved deferred action status; or

(F) pending application for adjustment of status to legal permanent resident or conditional resident[~~.~~]; and

(j) beginning on January 30, 2012, a medical certification status.

(2) An application under this section shall also include all certifications required by 49 C.F.R., Part 383.71.

(3) When the holder of a license under this part changes the holder's name, mailing address, or residence, the holder shall make application for a duplicate license within 30 days of the change.

(4) A person who has been a resident of this state for 30 consecutive days may not drive a commercial motor vehicle under the authority of a commercial driver license issued by another jurisdiction.

Section 10. Section 53-3-410.1 is enacted to read:

53-3-410.1. Medical certification requirements.

(1) (a) A person whose medical certification status is "non-excepted interstate" under Subsection 53-3-402(13)(a) is required to provide the division an updated medical examiner's certificate under 49 C.F.R. 391.45 upon request by the division.

(b) A request by the division for a person to provide an updated medical examiner's certification shall correspond with the expiration of the previously submitted medical examiner's certificate.

(c) If a person fails to provide an updated medical examiner's certificate under Subsection (1)(a), the person shall be required to downgrade the person's CDL to a class D license.

(2) Failure to comply with the requirement of Subsection (1)(c) shall result in the denial of the license under Subsection 53-3-221(14).

Section 11. Section 53-3-412 is amended to read:

53-3-412. CDL classifications, endorsements, and restrictions.

A CDL may be granted with the following classifications, endorsements, and restrictions:

(1) Classifications:

(a) Class A: any combination of vehicles with a GVWR of 26,001 pounds or more, if the GVWR of the one or more vehicles being towed is in excess of 10,000 pounds;

(b) Class B: any single motor vehicle with a GVWR of 26,001 pounds or more, including that motor vehicle when towing a vehicle with a GVWR of 10,000 pounds or less; and

(c) Class C: any single motor vehicle with a GVWR of less than 26,001 pounds or that motor vehicle when towing a vehicle with a GVWR of 10,000 pounds or less when the vehicle is designed or used:

(i) to transport more than 15 passengers, including the driver;

(ii) as a school bus, and weighing less than 26,001 pounds GVWR; or

(iii) to transport hazardous materials that requires the vehicle to be placarded under 49 C.F.R., Part 172, Subpart F.

(2) Endorsements:

(a) "H" authorizes the driver to drive a commercial motor vehicle transporting hazardous materials.

(b) "N" authorizes the driver to drive a tank vehicle.

(c) "P" authorizes the driver to drive a motor vehicle carrying more than 15 passengers including the driver.

(d) "S" authorizes the driver to drive a school bus or a motor vehicle [~~carrying~~] designed to carry more than 15 passengers including the driver.

(e) "T" authorizes the driver to drive a commercial motor vehicle with a double or triple trailer.

(f) "X" authorizes the driver to drive a tank vehicle and transport hazardous materials.

(3) Restrictions:

(a) "K" restricts the driver to driving intrastate only any commercial motor vehicle as defined by Title 49, C.F.R., Parts 383 and 390.

(b) "L" restricts the driver to driving a commercial motor vehicle not equipped with air brakes.

(c) "J" provides for other CDL restrictions.

(d) "M" restricts a driver from transporting passengers using a class A bus.

(e) "N" restricts a driver from transporting passengers using a class A or class B bus.

(f) (i) "V" indicates that the driver has been issued a variance by the Federal Motor Carrier Safety Administration in reference to the driver's medical certification status.

(ii) A driver with a "V" restriction shall have the letter outlining the specifications for the variance in the driver's possession along with the driver's commercial driver license when operating a commercial motor vehicle.

Section 12. Section 53-3-413 is amended to read:

53-3-413. Issuance of CDL by division -- Driving record -- Expiration date -- Renewal -- Hazardous materials provision.

(1) Before the division may grant a CDL, the division shall obtain the driving record information regarding the applicant through the CDLIS, the NDR, and from each state where the applicant has been licensed.

(2) The division shall notify the CDLIS and provide all information required to ensure identification of the CDL holder within 10 days after:

(a) issuing a CDL following application for an original, renewal, transfer, or upgrade of the CDL; or

(b) any change is made to the identifying information of a CDL holder.

(3) (a) The expiration date for a CDL is the birth date of the holder in the fifth year following the year of issuance of the CDL.

(b) A limited-term CDL expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided in Subsection (3)(a), whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term CDL was issued if there is no definite end to the individual's period of authorized stay.

(c) An original CDL or a renewal to an original CDL expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

[~~(c)~~] (d) A CDL held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(4) (a) The applicant for a renewal of a CDL shall complete the application form required by Section 53-3-410 and provide updated information and required certification.

(b) In addition to the requirements under Subsection (4)(a), the applicant for a renewal of a limited-term CDL shall present documentary evidence that the status by which the individual originally qualified for the limited-term CDL has been extended by the United States Citizenship and

Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) The division shall distinguish a limited-term CDL by clearly indicating on the document:

(a) that it is temporary; and

(b) its expiration date.

(6) (a) The division may not issue a hazardous materials endorsement on a CDL unless the applicant meets the security threat assessment standards of the federal Transportation Security Administration.

(b) The division shall revoke the hazardous materials endorsement on a CDL upon receiving notice from the federal Transportation Security Administration that the person holding a hazardous materials endorsement does not meet Transportation Security Administration security threat assessment standards.

(c) To obtain an original hazardous materials endorsement or retain a hazardous materials endorsement upon CDL renewal or transfer, the applicant must take and pass the knowledge test for hazardous materials endorsement in addition to any other testing required by the division.

(7) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a limited-term CDL in the same way as a CDL issued under this chapter.

Section 13. Section 53-3-414 is amended to read:

53-3-414. CDL disqualification or suspension -- Grounds and duration -- Procedure.

(1) (a) A person who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle for a period of not less than one year effective seven days from the date of notice to the driver if convicted of a first offense of:

[~~(a)~~] (i) driving a motor vehicle while under the influence of alcohol, drugs, a controlled substance, or more than one of these;

[~~(b)~~] (ii) driving a commercial motor vehicle while the concentration of alcohol in the person's blood, breath, or urine is .04 grams or more;

[~~(c)~~] (iii) leaving the scene of an accident involving a motor vehicle the person was driving;

[~~(d)~~] (iv) failing to provide reasonable assistance or identification when involved in an accident resulting in:

[~~(i)~~] (A) death in accordance with Section 41-6a-401.5; or

[~~(ii)~~] (B) personal injury in accordance with Section 41-6a-401.3;

[~~(e)~~] (v) using a motor vehicle in the commission of a felony;

[~~(f)~~] (vi) refusal to submit to a test to determine the concentration of alcohol in the person's blood, breath, or urine;

[~~(g)~~] (vii) driving a commercial motor vehicle while the person's commercial driver license is disqualified in accordance with the provisions of this section for violating an offense described in this section; or

[~~(h)~~] (viii) operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of automobile homicide under Section 76-5-207, manslaughter under Section 76-5-205, or negligent homicide under Section 76-5-206.

(b) The division shall subtract from any disqualification period under Subsection (1)(a) the number of days for which a license was previously disqualified under Subsection 53-3-414(1)(b) or (14) if the previous disqualification was based on the same occurrence upon which the record of conviction is based.

(2) If any of the violations under Subsection (1) occur while the driver is transporting a hazardous material required to be placarded, the driver is disqualified for not less than three years.

(3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if convicted of or administrative action is taken for two or more of any of the offenses under Subsection (1), (5), or (14) arising from two or more separate incidents.

(b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

(4) (a) Any driver disqualified for life from driving a commercial motor vehicle under this section may apply to the division for reinstatement of the driver's CDL if the driver:

(i) has both voluntarily enrolled in and successfully completed an appropriate rehabilitation program that:

(A) meets the standards of the division; and

(B) complies with 49 C.F.R. Part 383.51;

(ii) has served a minimum disqualification period of 10 years; and

(iii) has fully met the standards for reinstatement of commercial motor vehicle driving privileges established by rule of the division.

(b) If a reinstated driver is subsequently convicted of another disqualifying offense under this section, the driver is permanently disqualified for life and is ineligible to again apply for a reduction of the lifetime disqualification.

(5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense

a controlled substance and is ineligible to apply for a reduction of the lifetime disqualification under Subsection (4).

(6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic violations:

(i) occur within three years of each other;

(ii) arise from separate incidents; and

(iii) involve the use or operation of a commercial motor vehicle.

(c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (6), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(7) (a) A driver of a commercial motor vehicle who is convicted of violating an out-of-service order while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(i) 180 days if the driver is convicted of a first violation;

(ii) two years if, during any 10 year period, the driver is convicted of two violations of out-of-service orders in separate incidents;

(iii) three years but not more than five years if, during any 10 year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents;

(iv) 180 days but not more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver; or

(v) three years but not more than five years if, during any 10 year period, the driver is convicted of two or more violations, in separate incidents, of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver.

(b) A driver of a commercial motor vehicle who is convicted of a first violation of an out-of-service order is subject to a civil penalty of not less than $2,500.

(c) A driver of a commercial motor vehicle who is convicted of a second or subsequent violation of an out-of-service order is subject to a civil penalty of not less than $5,000.

(8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days if the division determines, in its check of the driver's driver license status, application, and record prior to issuing a CDL or at any time after the CDL is issued, that the driver has falsified information required to apply for a CDL in this state.

(9) A driver of a commercial motor vehicle who is convicted of violating a railroad-highway grade crossing provision under Section 41-6a-1205, while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(a) 60 days if the driver is convicted of a first violation;

(b) 120 days if, during any three-year period, the driver is convicted of a second violation in separate incidents; or

(c) one year if, during any three-year period, the driver is convicted of three or more violations in separate incidents.

(10) (a) The division shall update its records and notify the CDLIS within 10 days of suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

(b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL, the division shall notify the licensing authority of the issuing state or other jurisdiction and the CDLIS within 10 days after the action is taken.

(c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this state, the division shall notify the CDLIS within 10 days after the action is taken.

(11) (a) The division may immediately suspend or disqualify the CDL of a driver without a hearing or receiving a record of the driver's conviction when the division has reason to believe that the:

(i) CDL was issued by the division through error or fraud;

(ii) applicant provided incorrect or incomplete information to the division;

(iii) applicant cheated on any part of a CDL examination;

(iv) driver no longer meets the fitness standards required to obtain a CDL; or

(v) driver poses an imminent hazard.

(b) Suspension of a CDL under this Subsection (11) shall be in accordance with Section 53-3-221.

(c) If a hearing is held under Section 53-3-221, the division shall then rescind the suspension order or cancel the CDL.

(12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (12)(a) are effective only if the serious traffic violations:

(i) occur within three years of each other;

(ii) arise from separate incidents; and

(iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving privilege from at least one of the violations.

(c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (12), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no contest to a violation of a disqualifying offense described in this section which plea is held in abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend, cancel, or revoke the person's CDL for the period required under this section for a conviction of that disqualifying offense, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) The division shall report the plea in abeyance to the CDLIS within 10 days of taking the action under Subsection (13)(a).

(c) A plea which is held in abeyance may not be removed from a person's driving record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

(i) reduced or dismissed in accordance with the plea in abeyance agreement; or

(ii) expunged under Section 77-40-105.

(14) The division shall disqualify the CDL of a driver for an arrest of a violation of Section 41-6a-502 when administrative action is taken against the operator's driving privilege pursuant to Section 53-3-223 for a period of:

(a) one year; or

(b) three years if the violation occurred while transporting hazardous materials.

(15) The division may concurrently impose any disqualification periods that arise under this section while a driver is disqualified by the Secretary of the United States Department of Transportation under 49 C.F.R. 383.52 for posing an imminent hazard.

Section 14. Section 53-3-419 is amended to read:

53-3-419. Nonresident driver violations reported to resident state.

(1) When the division receives a report of the conviction or plea in abeyance of a nonresident holder of a CDL for a violation of a state law or local ordinance relating to traffic control, the division shall notify the driver licensing authority in the licensing state within [~~10~~] five days of receipt of the report.

(2) This section does not apply to parking violations.

CHAPTER 191
S. B. 31
Passed February 9, 2011
Approved March 22, 2011
Effective May 10, 2011

RURAL FAST TRACK PROGRAM AMENDMENTS

Chief Sponsor: Ralph Okerlund
House Sponsor: Christine F. Watkins
Cosponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends provisions of the Industrial Assistance Fund regarding the Rural Fast Track Program.

Highlighted Provisions:

This bill:

- provides that one of the purposes of the Rural Fast Track Program is to use the Business Expansion and Retention Initiative to further promote business and economic development in rural Utah; and
- provides for the Office of Rural Development to administer the Initiative.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-1-904, as last amended by Laws of Utah 2010, Chapter 278

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

Section 1. Section 63M-1-904 is amended to read:

63M-1-904. Rural Fast Track Program -- Creation -- Funding -- Qualifications for program participation -- Awards -- Reports.

(1) (a) There is created the Rural Fast Track Program, hereafter referred to in this section as "the program."

(b) The program is a funded component of the economically disadvantaged rural areas designation in Subsection 63M-1-903(1)(a).

(2) (a) The purpose of the program is to:

(i) provide an efficient way for small companies in rural Utah to receive incentives for creating high paying jobs in the rural areas of the state; and

(ii) use the Business Expansion and Retention Initiative to further promote business and economic development in rural Utah.

(b) The Office of Rural Development shall administer the Business Expansion and Retention Initiative for the rural areas of the state.

(3) (a) Twenty percent of the money in the Industrial Assistance Account at the beginning of each fiscal year shall be used to fund the program.

(b) The 20% referred to in Subsection (3)(a) is not in addition to but is a part of the up to 50% designation for economically disadvantaged rural areas referred to in Subsection 63M-1-903(1)(a).

(c) If any of the 20% allocation referred to in Subsection (3)(a) has not been used in the program by the end of the third quarter of each fiscal year, that money may be used for any other loan, grant, or assistance program offered through the Industrial Assistance Account during the fiscal year.

(4) (a) To qualify for participation in the program a company shall:

(i) complete and file with the office an application for participation in the program, signed by an officer of the company;

(ii) be located and conduct its business operations in a county in the state that has:

(A) a population of less than 30,000; and

(B) an average household income of less than $60,000 as reflected in the most recently available data collected and reported by the United States Census Bureau;

(iii) have been in business in the state for at least two years; and

(iv) have at least two employees.

(b) (i) Office staff shall verify an applicant's qualifications under Subsection (4)(a).

(ii) The application must be approved by the administrator in order for a company to receive an incentive or other assistance under this section.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator may make rules governing:

(i) the content of the application form referred to in Subsection (4)(a)(i);

(ii) who qualifies as an employee under Subsection (4)(a)(iv); and

(iii) the verification procedure referred to in Subsection (4)(b).

(5) (a) The administrator shall make incentive cash awards to small companies under this section based on the following criteria:

(i) $1,000 for each new incremental job that pays over 110% of the county's average annual wage;

(ii) $1,250 for each incremental job that pays over 115% of the county's average annual wage; and

(iii) $1,500 for each incremental job that pays over 125% of the county's average annual wage.

(b) The administrator shall make a cash award under Subsection (5)(a) when a new incremental job has been in place for at least 12 months.

(c) The creation of a new incremental job by a company is based on the number of employees at the company during the previous 24 months.

(d) (i) A small company may also apply for grants, loans, or other financial assistance under the program to help develop its business in rural Utah and may receive up to $50,000 under the program if approved by the administrator.

(ii) The board must approve a distribution that exceeds the $50,000 cap under Subsection (5)(d)(i).

(6) The administrator shall make a quarterly report to the board of the awards made by the administrator under this section and an annual report to the Legislative Workforce Services and Community and Economic Development Interim Committee as to the awards and their impact on economic development in the state's rural areas.

CHAPTER 192
S. B. 33
Passed February 3, 2011
Approved March 22, 2011
Effective May 10, 2011

HEALTH DISPARITIES AND RELATED AMERICAN INDIAN PROGRAMS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill modifies the Utah Health Code to address the Center for Multicultural Health and provide for an American Indian-Alaskan Native Health Liaison.

Highlighted Provisions:

This bill:

- renames the Center for Multicultural Health to be the Office of Health Disparities Reduction;
- establishes the position of American Indian-Alaskan Native Health Liaison; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-9-104.6, as last amended by Laws of Utah 2010, Chapter 286
26-7-2, as last amended by Laws of Utah 2006, Chapter 349

ENACTS:

26-7-2.5, Utah Code Annotated 1953

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

Section 1. Section 9-9-104.6 is amended to read:

9-9-104.6. Participation of state agencies in meetings with tribal leaders -- Contact information.

(1) For at least three of the joint meetings described in Subsection 9-9-104.5(2)(a), the division shall coordinate with representatives of tribal governments and the entities listed in Subsection (2) to provide for the broadest participation possible in the joint meetings.

(2) The following may participate in all meetings described in Subsection (1):

(a) the chairs of the Native American Legislative Liaison Committee created in Section 36-22-1;

(b) the governor or the governor's designee; [~~and~~]

(c) (i) the American Indian-Alaskan Native Health Liaison appointed in accordance with Section 26-7-2.5; or

(ii) if the American Indian-Alaskan Native Health Liaison is not appointed, a representative of the Department of Health appointed by the executive director of the Department of Health; and

[~~(c)~~] (d) a representative appointed by the chief administrative officer of the following:

[~~(i) the Department of Health;~~]

[~~(ii)~~] (i) the Department of Human Services;

[~~(iii)~~] (ii) the Department of Natural Resources;

[~~(iv)~~] (iii) the Department of Workforce Services;

[~~(v)~~] (iv) the Governor's Office of Economic Development;

[~~(vi)~~] (v) the State Office of Education; and

[~~(vii)~~] (vi) the State Board of Regents.

(3) (a) The chief administrative officer of the agencies listed in Subsection (3)(b) shall:

(i) designate the name of a contact person for that agency that can assist in coordinating the efforts of state and tribal governments in meeting the needs of the Native Americans residing in the state; and

(ii) notify the division:

(A) who is the designated contact person described in Subsection (3)(a)(i); and

(B) of any change in who is the designated contact person described in Subsection (3)(a)(i).

(b) This Subsection (3) applies to:

(i) the Department of Agriculture and Food;

(ii) the Department of Community and Culture;

(iii) the Department of Corrections;

(iv) the Department of Environmental Quality;

(v) the Department of Public Safety;

(vi) the Department of Transportation;

(vii) the Office of the Attorney General;

(viii) the State Tax Commission; and

(ix) any agency described in Subsection (2)(c) or (d).

(c) At the request of the division, a contact person listed in Subsection (3)(b) may participate in a meeting described in Subsection (1).

(4) A participant under this section who is not a legislator may not receive compensation or benefits for the participant's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 2. Section 26-7-2 is amended to read:

26-7-2. Office of Health Disparities Reduction -- Duties.

(1) As used in this section[~~, "multicultural and~~]:

(a) "Multicultural or minority health [~~issues~~] issue" means a health issue, including a mental and oral health issue, [~~issues~~] of particular interest to cultural, ethnic, racial, or other subpopulations, including:

[~~(a)~~] (i) disparities in:

[~~(i)~~] (A) disease incidence, prevalence, morbidity, mortality, treatment, and treatment response; and

[~~(ii)~~] (B) access to care; and

[~~(b)~~] (ii) cultural competency in the delivery of health care.

(b) "Office" means the Office of Health Disparities Reduction created in this section.

(2) There is created within the department the [~~Center for Multicultural Health~~] Office of Health Disparities Reduction.

(3) The [~~Center for Multicultural Health~~] office shall:

(a) promote and coordinate the research, data production [~~and~~], dissemination, education, and health promotion activities of the following that relate to a multicultural or minority health issue:

(i) the department[~~,~~];

(ii) local health departments[~~,~~];

(iii) local mental health authorities[~~,~~];

(iv) public schools[~~,~~];

(v) community-based organizations[~~, Indian tribes,~~]; and

(vi) other organizations within the state [~~as they relate to multicultural and minority health issues~~];

(b) assist in the development and implementation of one or more programs to address a multicultural [~~and~~] or minority health [~~issues~~] issue;

(c) promote the dissemination and use of information on a multicultural [~~and~~] or minority health [~~issues~~] issue by minority populations, health care providers, and others;

(d) seek federal funding and other resources to accomplish [~~its~~] the office's mission;

(e) provide technical assistance to [~~entities~~] organizations within the state seeking funding to study or address a multicultural [~~and~~] or minority health [~~issues~~] issue;

(f) develop and increase the capacity of the [~~center~~] office to:

(i) ensure the delivery of qualified timely culturally appropriate translation services across [~~all~~] department programs; and

(ii) provide, [~~where~~] when appropriate, linguistically competent translation and communication services for limited English proficiency individuals;

(g) provide staff assistance to any advisory committee created by the department to study a multicultural [~~and~~] or minority health [~~issues~~] issue; and

(h) annually report to the Legislature on its activities and accomplishments.

Section 3. Section 26-7-2.5 is enacted to read:

26-7-2.5. American Indian-Alaskan Native Health Liaison -- Duties.

(1) As used in this section:

(a) "Health care" means care, treatment, service, or a procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(b) "Liaison" means the American Indian–Alaskan Native Health Liaison appointed under this section.

(2) Subject to budget constraints, the executive director shall appoint an individual as the American Indian–Alaskan Native Health Liaison.

(3) The liaison shall on behalf of the executive director and the department:

(a) promote and coordinate collaborative efforts between the department and Utah's American Indian population to improve the availability and accessibility of quality health care impacting Utah's American Indian populations on and off reservations;

(b) interact with the following to improve health disparities for Utah's American Indian populations:

(i) tribal health programs;

(ii) local health departments;

(iii) state agencies and officials; and

(iv) providers of health care in the private sector;

(c) facilitate education, training, and technical assistance regarding public health and medical assistance programs to Utah's American Indian populations; and

(d) staff an advisory board by which Utah's tribes may consult with state and local agencies for the development and improvement of public health programs designed to address improved health care for Utah's American Indian populations on and off the reservation.

(4) The liaison shall annually report the liaison's activities and accomplishments to the Native American Legislative Liaison Committee created in Section 36-22-1.

CHAPTER 193
S. B. 36
Passed February 14, 2011
Approved March 22, 2011
Effective May 10, 2011

CONCEALED FIREARM ACT AMENDMENTS

Chief Sponsor: John L. Valentine
House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill amends provisions of the Concealed Firearm Act related to the issuance of concealed firearm permits to nonresidents.

Highlighted Provisions:

This bill:

- requires a nonresident applicant for a concealed firearm permit to hold a current concealed firearm or concealed weapon permit from the applicant's state of residency that recognizes the validity of the Utah permit in that state or has reciprocity with the Utah concealed firearm permit law; and
- requires a nonresident applicant to pay an additional $5 processing fee for the issuance of the permit.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-5-704, as last amended by Laws of Utah 2010, Chapters 62 and 283
53-5-707, as last amended by Laws of Utah 2010, Chapter 62

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

Section 1. Section 53-5-704 is amended to read:

53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for concealed firearms instructor -- Requirements for issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.

(1) (a) The bureau shall issue a permit to carry a concealed firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days after receiving an application, unless the bureau finds proof that the applicant does not meet the qualifications set forth in Subsection (2).

(b) The permit is valid throughout the state for five years, without restriction, except as otherwise provided by Section 53-5-710.

(c) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to a person issued a permit under Subsection (1)(a).

(2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder:

(i) has been or is convicted of a felony;

(ii) has been or is convicted of a crime of violence;

(iii) has been or is convicted of an offense involving the use of alcohol;

(iv) has been or is convicted of an offense involving the unlawful use of narcotics or other controlled substances;

(v) has been or is convicted of an offense involving moral turpitude;

(vi) has been or is convicted of an offense involving domestic violence;

(vii) has been or is adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and

(viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503 and federal law.

(b) In determining whether an applicant or permit holder meets the qualifications set forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

(3) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if it has reasonable cause to believe that the applicant or permit holder has been or is a danger to self or others as demonstrated by evidence, including:

(i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

(ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or

(iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

(b) The bureau may not deny, suspend, or revoke a concealed firearm permit solely for a single conviction [~~for~~] of an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

(c) In determining whether the applicant or permit holder has been or is a danger to self or others, the bureau may inspect:

(i) expunged records of arrests and convictions of adults as provided in Section 77-40-109; and

(ii) juvenile court records as provided in Section 78A-6-209.

(d) (i) If a person granted a permit under this part has been charged with a crime of violence in any state, the bureau shall suspend the permit.

(ii) Upon notice of the acquittal of the person charged, or notice of the charges having been dropped, the bureau shall immediately reinstate the suspended permit.

(4) (a) In addition to meeting the other qualifications for the issuance of a concealed firearm permit under this section, a nonresident

applicant who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law shall:

(i) hold a current concealed firearm or concealed weapon permit issued by the appropriate permitting authority of the nonresident applicant's state of residency; and

(ii) submit a photocopy or electronic copy of the nonresident applicant's current concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).

(b) A nonresident applicant who knowingly and willfully provides false information to the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit for a period of 10 years.

(c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm permit that are received by the bureau after May 10, 2011.

(d) Beginning January 1, 2012, Subsection (4)(a) also applies to an application for renewal of a concealed firearm permit by a nonresident.

[~~(4) A~~] (5) The bureau shall issue a concealed firearm permit to a former peace officer who departs full-time employment as a peace officer, in an honorable manner, [~~shall be issued a concealed firearm permit~~] within five years of that departure if the officer meets the requirements of this section.

[~~(5)~~] (6) Except as provided in Subsection [~~(6)~~] (7), the bureau shall also require the applicant to provide:

(a) the address of the applicant's permanent residence;

(b) one recent dated photograph;

(c) one set of fingerprints; and

(d) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection [~~(7)~~] (8).

[~~(6)~~] (7) An applicant who is a law enforcement officer under Section 53-13-103 may provide a letter of good standing from the officer's commanding officer in place of the evidence required by Subsection [~~(5)~~] (6)(d).

[~~(7)~~] (8) (a) General familiarity with the types of firearms to be concealed includes training in:

(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and

(ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of force by a private citizen, including use of deadly force, transportation, and concealment.

(b) An applicant may satisfy the general familiarity requirement of Subsection [~~(7)~~] (8)(a) by one of the following:

(i) completion of a course of instruction conducted by a national, state, or local firearms training organization approved by the bureau;

(ii) certification of general familiarity by a person who has been certified by the bureau, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor; or

(iii) equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service.

(c) Instruction taken by a student under Subsection [~~(7)~~] (8) shall be in person and not through electronic means.

[~~(8)~~] (9) (a) An applicant for certification as a Utah concealed firearms instructor shall:

(i) be at least 21 years of age;

(ii) be currently eligible to possess a firearm under Section 76-10-503 [~~and federal law~~];

(iii) have a current National Rifle Association certification or its equivalent as determined by the division; [~~and~~]

(iv) have taken a course of instruction and passed a certification test as described in Subsection [~~(8)~~] (9)(c)[~~.~~]; and

(v) possess a Utah concealed firearm permit.

(b) An instructor's certification is valid for three years from the date of issuance, unless revoked by the bureau.

(c) (i) In order to obtain initial certification or renew a certification, an instructor shall attend an instructional course and pass a test under the direction of the bureau.

(ii) (A) The bureau shall provide or contract to provide the course referred to in Subsection [~~(8)~~] (9)(c)(i) twice every year.

(B) The course shall include instruction on current Utah law related to firearms, including concealed carry statutes and rules, and the use of deadly force by private citizens.

(d) (i) Each applicant for certification under this Subsection [~~(8)~~] (9) shall pay a fee of $50.00 at the time of application for initial certification.

(ii) The renewal fee for the certificate is $25.

(iii) The [~~fees~~] bureau may use a fee paid under Subsections [~~(8)~~] (9)(d)(i) and (ii) [~~may be used by the bureau~~] as a dedicated credit to cover the cost incurred in maintaining and improving the instruction program required for concealed firearm instructors under this Subsection [~~(8)~~] (9).

[~~(9)~~] (10) A certified concealed firearms instructor shall provide each of the instructor's students with the required course of instruction outline approved by the bureau.

[~~(10)~~] (11) (a) (i) A concealed firearms instructor [~~is required to~~] shall provide a signed certificate to a person successfully completing the offered course of instruction.

(ii) The instructor shall sign the certificate with the exact name indicated on the instructor's certification issued by the bureau under Subsection [~~(8)~~] (9).

(iii) (A) The certificate shall also have affixed to it the instructor's official seal, which is the exclusive property of the instructor and may not be used by any other person.

(B) The instructor shall destroy the seal upon revocation or expiration of the instructor's certification under Subsection [~~(8)~~] (9).

(C) The bureau shall determine the design and content of the seal to include at least the following:

(I) the instructor's name as it appears on the instructor's certification;

(II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my certification expires on (the instructor's certification expiration date)"; and

(III) the instructor's business or residence address.

(D) The seal shall be affixed to each student certificate issued by the instructor in a manner that does not obscure or render illegible any information or signatures contained in the document.

(b) The applicant shall provide the certificate to the bureau in compliance with Subsection [~~(5)~~] (6)(d).

[~~(11)~~] (12) The division may deny, suspend, or revoke the certification of an applicant or a concealed firearms instructor if it has reason to believe the applicant or the instructor has:

(a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

(b) knowingly and willfully provided false information to the bureau.

[~~(12)~~] (13) An applicant for certification or a concealed firearms instructor has the same appeal rights as set forth in Subsection [~~(15)~~] (16).

[~~(13)~~] (14) In providing instruction and issuing a permit under this part, the concealed firearms instructor and the bureau are not vicariously liable for damages caused by the permit holder.

[~~(14)~~] (15) An individual who knowingly and willfully provides false information on an application filed under this part is guilty of a class B misdemeanor, and the application may be denied, or the permit may be suspended or revoked.

[~~(15)~~] (16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or permit holder may file a petition for review with the board within 60 days from the date the denial, suspension, or revocation is received by the applicant or permit holder by certified mail, return receipt requested.

(b) The bureau's denial of a permit shall be in writing and shall include the general reasons for the action.

(c) If an applicant or permit holder appeals the denial to the review board, the applicant or permit holder may have access to the evidence upon which the denial is based in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(d) On appeal to the board, the bureau has the burden of proof by a preponderance of the evidence.

(e) (i) Upon a ruling by the board on the appeal of a denial, the division shall issue a final order within 30 days stating the board's decision.

(ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

(iii) The final order is final bureau action for purposes of judicial review under Section 63G-4-402.

[~~(16)~~] (17) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this chapter.

Section 2. Section 53-5-707 is amended to read:

53-5-707. Permit -- Fees -- Disposition.

(1) (a) Each applicant for a permit shall pay a fee of $35 at the time of filing an application, except that a nonresident applicant shall pay an additional $5 for the additional cost of processing a nonresident application.

(b) The initial fee shall be waived for an applicant who is a law enforcement officer under Section 53-13-103.

(2) The renewal fee for the permit is $10.

(3) The replacement fee for the permit is $10.

(4) The late fee for the renewal permit is $7.50.

(5) The bureau shall use the fees collected under Subsections (1), (2), (3), and (4) as a dedicated credit to cover the costs of issuing concealed firearm permits under this part.

(6) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau shall promptly forward any fees collected under Subsection (6)(a) to the appropriate agency.

(7) The bureau shall make an annual report to the Legislature's Law Enforcement and Criminal Justice Interim Committee on the amount and use of the fees collected under this section.

CHAPTER 194
S. B. 37
Passed February 14, 2011
Approved March 22, 2011
Effective May 10, 2011

EMERGENCY FOOD AGENCY AMENDMENTS

Chief Sponsor: Peter C. Knudson
House Sponsor: Ronda Rudd Menlove

LONG TITLE

General Description:

This bill modifies the definition of qualified emergency food agency in the State Community Services Act to include a food pantry operated by a municipality located within the state.

Highlighted Provisions:

This bill:

- provides that a food pantry operated by a municipality within the state is a qualified emergency food agency for purposes of the State Community Services Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-1409, as last amended by Laws of Utah 2009, Chapter 385

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

Section 1. Section 9-4-1409 is amended to read:

9-4-1409. Qualified Emergency Food Agencies Fund -- Expenditure of revenues.

(1) As used in this section:

(a) "Association of governments" means the following created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act:

(i) an association of governments; or

(ii) a regional council that acts as an association of governments.

(b) "Food and food ingredients" is as defined in Section 59-12-102.

(c) "Pounds of food donated" means the aggregate number of pounds of food and food ingredients that are donated:

(i) to a qualified emergency food agency; and

(ii) by a person, other than an organization that as part of its activities operates a program that has as the program's primary purpose to:

(A) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or

(B) provide food and food ingredients directly to low-income persons.

(d) "Qualified emergency food agency" means an organization that:

(i) is:

(A) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; [~~or~~]

(B) an association of governments; or

(C) a food pantry operated by a municipality located within the state;

(ii) as part of its activities operates a program that has as the program's primary purpose to:

(A) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or

(B) provide food and food ingredients directly to low-income persons; and

(iii) the office determines to be a qualified emergency food agency.

(2) There is created a restricted special revenue fund known as the Qualified Emergency Food Agencies Fund.

(3) (a) The Qualified Emergency Food Agencies Fund shall be funded by the sales and use tax revenues described in:

(i) Section 59-12-103;

(ii) Section 59-12-204; and

(iii) Section 59-12-1102.

(b) Any interest earned on the Qualified Emergency Food Agencies Fund shall be deposited into the General Fund.

(4) The office shall for a fiscal year distribute monies deposited into the Qualified Emergency Food Agencies Fund to qualified emergency food agencies within the state as provided in this section.

(5) A qualified emergency food agency shall file an application with the office before the qualified emergency food agency may receive a distribution under this section.

(6) Except as provided in Subsection (7), the office shall for a fiscal year distribute to a qualified emergency food agency an amount equal to the product of:

(a) the pounds of food donated to the qualified emergency food agency during that fiscal year; and

(b) $.12.

(7) If the monies deposited into the Qualified Emergency Food Agencies Fund are insufficient to make the distributions required by Subsection (6), the office shall make distributions to qualified emergency food agencies in the order that the office receives applications from the qualified emergency food agencies until all of the monies deposited into the Qualified Emergency Food Agencies Fund for the fiscal year are expended.

(8) A qualified emergency food agency may expend a distribution received in accordance with this section only for a purpose related to:

(a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or

(b) providing food and food ingredients directly to low-income persons.

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Housing and Community Development may make rules providing procedures for implementing the distributions required by this section, including:

(a) standards for determining and verifying the amount of a distribution that a qualified emergency food agency may receive;

(b) procedures for a qualified emergency food agency to apply for a distribution, including the frequency with which a qualified emergency food agency may apply for a distribution; and

(c) consistent with Subsection (1)(d), determining whether an entity is a qualified emergency food agency.

CHAPTER 195
S. B. 42
Passed February 9, 2011
Approved March 22, 2011
Effective May 10, 2011

REGULATION OF SIGN COMPANIES

Chief Sponsor: Patricia W. Jones
House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies provisions of the Utah Construction Trades Licensing Act relating to specified sign contractors.

Highlighted Provisions:

This bill:

- makes it unlawful for a sign installation contractor or nonelectrical outdoor advertising sign contractor to fail to display the contractor's license number on vehicles that display the contractor's business name and to fail to carry a copy of the contractor's license in any other vehicle the contractor uses;
- requires the Division of Occupational and Professional Licensing to maintain a record of violations of sign company licensing requirements; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-55-402, as last amended by Laws of Utah 2000, Chapters 233 and 317
58-55-501, as last amended by Laws of Utah 2010, Chapters 53 and 387
58-55-503, as last amended by Laws of Utah 2010, Chapters 278 and 387

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

Section 1. Section 58-55-402 is amended to read:

58-55-402. Investigation of regulated activity.

(1) The division shall be responsible for the investigation of persons and activities in violation of the provisions of this chapter.

(2) (a) Investigation by the division shall include investigations of:

[~~(a)~~] (i) licensees engaged in unlawful or unprofessional conduct; and

[~~(b)~~] (ii) unlicensed persons engaged in the conduct of activity or work regulated under this chapter and for which a license is required.

(b) (i) As used in this Subsection (2)(b), "sign contractor":

(A) means a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules; and

(B) does not include a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(ii) The division shall maintain a record of the number of unlicensed persons found to have engaged each year in the conduct of activity or work regulated under this chapter for which a license as a sign contractor is required, including the location where a violation occurred.

(3) The division shall decline to proceed with investigation of the violation of any provisions of this chapter if the division finds there is no apparent material jeopardy to the public health, safety, and welfare.

(4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections 58-1-501(2)(g), 58-55-502(2), (3), and (4), and 58-55-501(16).

(5) Authorized representatives of the division shall be permitted to enter upon the premises or site of work regulated under this chapter for the purpose of determining compliance with the provisions of this chapter.

Section 2. Section 58-55-501 is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(10) allowing one's license to be used by another except as provided by statute or rule;

(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;

(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(14) employing an unlicensed alarm business or company or an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;

(16) if licensed under this chapter, willfully or deliberately disregarding or violating:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of the state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(f) reporting, notification, and filing laws of this state or the federal government;

(17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter;

(18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(19) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108;

(20) wrongfully filing a mechanics' lien in violation of Section 38-1-25;

(21) if licensed as a contractor, not completing the approved continuing education required under Section 58-55-302.5;

(22) an alarm company allowing an employee with a temporary license under Section 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii); [~~and~~]

(23) an alarm company agent under a temporary license under Section 58-55-312 engaging in conduct outside the scope of the temporary license, as provided in Subsection 58-55-312(3)(a)(ii)[~~.~~]; and

(24) the failure of a sign installation contractor or nonelectrical outdoor advertising sign contractor, as classified and defined in division rules, to:

(a) display the contractor's license number prominently on a vehicle that:

(i) the contractor uses; and

(ii) displays the contractor's business name; or

(b) carry a copy of the contractor's license in any other vehicle that the contractor uses at a job site, whether or not the vehicle is owned by the contractor.

Section 3. Section 58-55-503 is amended to read:

58-55-503. Penalty for unlawful conduct -- Citations.

(1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), [~~or~~] (23), or (24), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an

individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of the licensee's license by the division and the commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), [~~or~~] (23), or (24), or Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), [~~or~~] (23), or (24), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), [~~or~~] (21), or (24), or Subsection 58-55-504(2).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(iii) (A) A person who receives a citation or is fined for violating Subsection 58-55-501(21) may also be issued a cease and desist order from engaging in work to be performed by a contractor licensed under this chapter unless the person meets the continuing education requirement within 30 days after receipt of the citation or fine.

(B) The order, if issued, shall be removed upon the person's completion of the continuing education requirement.

(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.

(b) (i) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or

(iii) by mail.

(d) (i) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(h) Fines shall be assessed by the director or the director's designee according to the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (24), or Subsection 58-55-504(2); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (24), or Subsection 58-55-504(2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty.

(d) In an action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

CHAPTER 196
S. B. 48
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011
(Exception clause in Section 8)

ALZHEIMER'S STATE PLAN TASK FORCE

Chief Sponsor: Karen W. Morgan
House Sponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill establishes an Alzheimer's State Plan Task Force within the Division of Aging and Adult Services in the Department of Human Services.

Highlighted Provisions:

This bill:

- defines terms;
- creates the Alzheimer's State Plan Task Force within the Division of Aging and Adult Services in the Department of Human Services;
- describes the membership of, and provides staff support for, the task force;
- provides that members of the task force are not entitled to compensation, but may receive per diem and travel expenses;
- provides that the task force does not go into effect until at least $25,000 has been deposited into the Alzheimer's State Plan Task Force Restricted Account;
- addresses requirements relating to a quorum, actions, and meetings of the task force;
- describes the duties of the task force;
- requires the task force to complete its duties and submit a report on its findings and recommendations to the Health and Human Services Interim Committee on or before its November 2011 meeting; and
- creates the Alzheimer's State Plan Task Force Restricted Account.

Monies Appropriated in this Bill:

This bill appropriates:

- $2,040, as a one-time appropriation, to the House;
- $2,040, as a one-time appropriation, to the Senate; and
- $20,920, as a one-time, nonlapsing appropriation, to the Division of Aging and Adult Services, subject to intent language stating that the $20,920 shall be used, first for the expenses of the Alzheimer's State Plan Task Force, with the remaining money to be used by the Division of Aging and Adult Services to fund respite care for individuals with Alzheimer's disease or related dementia.

Other Special Clauses:

This bill is repealed on November 30, 2011.

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Definitions.

As used in this bill:

(1) "Department" means the Department of Human Services.

(2) "Division" means the Division of Aging and Adult Services within the department.

(3) "Related dementia" includes:

(a) frontotemporal dementia;

(b) dementia with lewy bodies;

(c) vascular dementia;

(d) Creutzfeldt-Jakob Disease;

(e) Parkinson's disease;

(f) Huntington disease; and

(g) other dementia that is caused by a progressive degeneration of brain cells.

(4) "Task Force" means the Alzheimer's State Plan Task Force, created in Section 2 of this bill.

Section 2. Alzheimer's State Plan Task Force -- Creation -- Membership -- Compensation -- Staff.

(1) Subject to Subsection (5), there is created, within the division, the Alzheimer's State Plan Task Force, consisting of the following 20 members:

(a) each of the following, or a designee of each of the following:

(i) the lieutenant governor;

(ii) the executive director of the department;

(iii) the executive director of the Department of Health; and

(iv) the director of the division;

(b) a member of the House of Representatives, appointed by the Speaker of the House;

(c) a member of the Senate, appointed by the President of the Senate; and

(d) the following members appointed by the governor:

(i) an individual who has early stage Alzheimer's disease or related dementia;

(ii) an individual who provides care to a family member with Alzheimer's disease or related dementia;

(iii) a licensed physician with experience in the diagnoses, treatment, and research of Alzheimer's disease;

(iv) a representative of the Long-term Care Ombudsman Program within the department;

(v) a representative of the personal home care profession;

(vi) two representatives of the long-term care profession, at least one who represents secure care for individuals with Alzheimer's disease;

(vii) a representative of the adult day care services profession;

(viii) a representative of the insurance profession;

(ix) a representative of the area agencies on aging;

(x) an individual with expertise in the provision of health services and human services to minorities;

(xi) a licensed attorney with experience in elder law; and

(xii) two representatives of one or more organizations that provide volunteer services relating to the care and support of a person with Alzheimer's disease.

(2) A non-legislative member of the task force may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(3) Salaries and expenses of a legislator who is a member of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Expense and Mileage Reimbursement for Authorized Legislative Meetings, Special Sessions, and Veto Override Sessions.

(4) The department shall provide staff support to the task force.

(5) This section does not go into effect until at least $25,000, in the form of donations or grants, has been deposited into the Alzheimer's State Plan Task Force Restricted Account.

Section 3. Quorum -- Meetings.

(1) A majority of the members of the task force constitute a quorum.

(2) An action by a majority of a quorum present at a meeting constitutes action by the task force.

(3) The task force shall hold at least six meetings including:

(a) an initial meeting;

(b) four meetings in different geographic regions of the state; and

(c) a concluding meeting.

Section 4. Duties.

(1) The task force shall:

(a) assess the current and future impact of Alzheimer's disease and related dementia on residents of the state;

(b) determine the existing services and resources in the state that address the needs of individuals with Alzheimer's disease and related dementia, and their families and caregivers; and

(c) develop recommendations to respond to escalating needs for the services and resources described in Subsection (1)(b).

(2) In fulfilling the duties described in Subsection (1), the task force shall examine:

(a) trends and needs in the state relating to populations with Alzheimer's disease or related dementia, including:

(i) the state's role in the provision of long-term care;

(ii) family caregiver support;

(iii) the provision of early-stage diagnoses, assistance, support, and medical services;

(iv) younger onset of Alzheimer's disease or related dementia;

(v) ethnic populations at higher risk; and

(vi) risk reduction;

(b) existing services, resources, and capacity available to individuals with Alzheimer's disease or related dementia, including:

(i) the type, cost, availability, and adequacy of services, including:

(A) home and community-based resources;

(B) respite care;

(C) residential long-term care; and

(D) geriatric-psychiatric units for individuals with associated behavioral disorders;

(ii) dementia-specific training requirements for individuals who are employed to provide care to individuals with Alzheimer's disease or related dementia;

(iii) quality of care measures for services delivered across the continuum of care;

(iv) the capacity of public safety and law enforcement to respond to individuals with Alzheimer's disease or related dementia; and

(v) state support to institutions of higher learning for research on Alzheimer's disease or related dementia;

(c) the need for state policy or action in order to provide clear, coordinated services and support to individuals with Alzheimer's disease or related dementia, and their families; and

(d) strategies to identify gaps in services.

Section 5. Reporting.

The task force shall complete its duties and submit a report on its findings and recommendations to the Health and Human Services Interim Committee on or before the committee's November 2011 meeting.

Section 6. Alzheimer's State Plan Task Force Restricted Account.

(1) There is created a restricted account within the General Fund known as the "Alzheimer's State Plan Task Force Restricted Account."

(2) The account shall be funded by donations and grants from public or private entities.

(3) Funds in the account are nonlapsing.

(4) The Legislature shall appropriate funds from the account to fund the operation and support of the task force, including per diem and travel expenses of non-legislative members and salaries and expenses of legislative members.

Section 7. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2010, and ending June 30, 2011. These appropriations are in addition to the amounts previously appropriated for fiscal year 2011.

Item 1 To Legislature - House of Representatives

From Alzheimer's State Plan Task Force Restricted Account, one-time $2,040

Schedule of Programs:

Alzheimer's State Plan Task Force $2,040

Item 2 To Legislature - Senate

From Alzheimer's State Plan Task Force Restricted Account, one-time $2,040

Schedule of Programs:

Alzheimer's State Plan Task Force $2,040

Item 3 To Department of Human Services - Division of Aging and Adult Services

From Alzheimer's State Plan Task Force Restricted Account, one-time $20,920

Schedule of Programs:

Alzheimer's State Plan Task Force $20,920

Under Section 63J-1-603, the Legislature intends that the $20,920 appropriated by this item shall not lapse at the close of fiscal year 2011 and shall be used, first for the expenses of the Alzheimer's State Plan Task Force, with the remaining money to be used by the Division of Aging and Adult Services to fund respite care for individuals with Alzheimer's disease or related dementia.

Section 8. Repeal date.

This bill is repealed on November 30, 2011.

CHAPTER 197
S. B. 52
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

TORTIOUS ACT ARBITRATION

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Jackie Biskupski

LONG TITLE

General Description:

This bill creates a new chapter in Title 78B to promote arbitration in tort cases.

Highlighted Provisions:

This bill:

- enacts a new chapter, Tort Arbitration, in Title 78B;
- creates filing and notice limits;
- prohibits claims for punitive damages;
- sets guidelines for rescinding an arbitration election;
- provides for the selection of a single arbitrator or panel of arbitrators;
- states that decisions by arbitrators are final, but still allows for a trial de novo;
- specifies payment obligations for parties; and
- addresses pre- and postjudgment interest.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-10a-101, Utah Code Annotated 1953
78B-10a-102, Utah Code Annotated 1953
78B-10a-103, Utah Code Annotated 1953
78B-10a-104, Utah Code Annotated 1953
78B-10a-105, Utah Code Annotated 1953
78B-10a-106, Utah Code Annotated 1953
78B-10a-107, Utah Code Annotated 1953
78B-10a-108, Utah Code Annotated 1953
78B-10a-109, Utah Code Annotated 1953

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

Section 1. Section 78B-10a-101 is enacted to read:

CHAPTER 10a. TORT ARBITRATION

78B-10a-101. Title.

This chapter is known as "Tort Arbitration."

Section 2. Section 78B-10a-102 is enacted to read:

78B-10a-102. General provisions -- Filing -- Notice -- Limits.

(1) Except for bodily injury cases involving a motor vehicle as described in Sections 31A-22-303, 31A-22-305, and 31A-22-305.3, medical malpractice cases as described in Section 78B-3-401, and governmental claims described in Section 63G-7-401, any party to an action for personal injury or property damage as a result of tortious conduct may elect to submit all bodily injury claims and property damage claims to arbitration by filing a notice of the submission of the claim to binding arbitration in a district court if:

(a) the claimant or the claimant's representative has:

(i) previously and timely filed a complaint in a district court that includes a claim for bodily injury or property damage, or both; and

(ii) filed a notice to submit the claim to arbitration within 14 days after the complaint is answered; and

(b) the notice required under Subsection (1)(a)(ii) is filed while the action under Subsection (1)(a)(i) is still pending.

(2) All parties shall respond within 30 days to the notice either agreeing or refusing to agree to arbitration. If a party does not respond, it is considered a refusal.

(a) If all parties agree to arbitration, the arbitration shall proceed in accordance with this chapter.

(b) If the parties do not agree to arbitration, the action shall proceed to trial. The request for arbitration may not be revealed during a trial or while a damage award is being deliberated.

(3) If the parties agree to submit a bodily injury or property damage claim to arbitration under Subsection (1), the party initially requesting arbitration or the party's representative is limited to an arbitration award not to exceed $50,000.

Section 3. Section 78B-10a-103 is enacted to read:

78B-10a-103. Punitive damages.

A claim for punitive damages may not be made in an arbitration proceeding in accordance with this chapter or any subsequent proceeding, even if the claim is later resolved through a trial de novo in accordance with Section 78B-10a-108.

Section 4. Section 78B-10a-104 is enacted to read:

78B-10a-104. Recission -- Discovery.

(1) (a) Any party who has agreed to arbitration in accordance with this chapter may rescind the agreement if the rescission is made within:

(i) 90 days after the agreement to arbitrate; and

(ii) not less than 30 days before any scheduled arbitration hearing.

(b) A person seeking to rescind an agreement to arbitrate in accordance with this chapter shall:

(i) file a notice of the rescission of the agreement to arbitrate with the district court where the matter was filed; and

(ii) send copies of the notice of the rescission of the agreement to arbitrate to all counsel of record in the action.

(c) All discovery completed in anticipation of the arbitration hearing shall be available for use by the

parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of Evidence.

(d) A party who has agreed to arbitrate in accordance with this chapter and then rescinded the agreement to arbitrate may not subsequently request to arbitrate the claim again.

(2) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration process agreed to in accordance with this chapter is subject to Rule 26, Utah Rules of Civil Procedure.

(b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be completed within 150 days after the date arbitration is elected in accordance with this chapter or the date the answer is filed, whichever is longer.

Section 5. Section 78B-10a-105 is enacted to read:

78B-10a-105. Selection of arbitrator or panel -- Costs.

(1) (a) Unless otherwise agreed to in writing by the parties, a claim submitted to arbitration shall be resolved by a single arbitrator.

(b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall agree on a single arbitrator within 90 days of the answer of the defendant.

(c) If the parties are unable to agree on a single arbitrator as required by Subsection (1)(b), a panel of three arbitrators shall be selected in accordance with Subsection (1)(d).

(d) If a panel of three arbitrators is selected:

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (1)(d)(i) shall jointly select one additional arbitrator to be included on the panel.

(2) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (1)(a); and

(b) if an arbitration panel is selected under Subsection (1)(d), each party shall pay:

(i) the fees and costs of the arbitrator selected by that party's side; and

(ii) an equal share of the fees and costs of the arbitrator selected under Subsection (1)(d)(ii).

Section 6. Section 78B-10a-106 is enacted to read:

78B-10a-106. Governing provisions.

(1) Except as otherwise provided in this chapter and unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted in accordance with this chapter shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(2) (a) Subject to the provisions of this chapter, the Utah Rules of Civil Procedure and Utah Rules of Evidence apply to arbitration proceedings.

(b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied with the intent of concluding the claim in a timely and cost-efficient manner.

(c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which the matter is filed.

(d) Dispositive motions shall be filed, heard, and decided by the district court prior to the arbitration proceeding in accordance with the court's scheduling order.

Section 7. Section 78B-10a-107 is enacted to read:

78B-10a-107. Decision -- Award -- Court action.

(1) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(2) An arbitration award issued in accordance with this chapter shall be the final resolution of all property damage or bodily injury claims between the parties and may be reduced to judgment by the court upon motion and notice unless:

(a) either party, within 20 days after service of the arbitration award:

(i) files a notice requesting a trial de novo in the district court; and

(ii) serves the nonmoving party with a copy of the notice requesting a trial de novo; or

(b) the arbitration award has been satisfied.

Section 8. Section 78B-10a-108 is enacted to read:

78B-10a-108. Trial de novo.

(1) (a) Upon filing a notice requesting a trial de novo in accordance with Subsection 78B-10a-107(2):

(i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90 days shall be allowed for further discovery;

(ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of the request for a trial de novo; and

(iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed in accordance with Subsection 78B-10a-107(2)(a)(i).

(2) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection 78B-10a-107(2), does not obtain a verdict that is at

least $5,000 and 30% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall include:

(i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(ii) the costs of expert witnesses and depositions.

(c) An award of costs under this Subsection (2) may not exceed $6,000.

(3) (a) If a defendant, as the moving party in a trial de novo requested in accordance with Subsection 78B-10a-107(2), does not obtain a verdict that is at least 30% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall include:

(i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(ii) the costs of expert witnesses and depositions.

(c) An award of costs in accordance with this Subsection (3) may not exceed $6,000.

(4) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsections (2) and (3), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

(a) was not fully disclosed in writing prior to the arbitration proceeding; or

(b) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.

(5) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

(6) (a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the total verdict at trial may not exceed $15,000 above any available limits of insurance coverage and the total verdict may not exceed $65,000.

(b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict at trial may not exceed $50,000.

Section 9. Section 78B-10a-109 is enacted to read:

78B-10a-109. Interest.

All arbitration awards issued in accordance with this chapter shall bear prejudgment interest pursuant to Sections 15-1-1 and 78B-5-824, and postjudgment interest pursuant to Section 15-1-4.

CHAPTER 198
S. B. 76
Passed March 9, 2011
Approved March 22, 2011
Effective July 1, 2011

DISTRIBUTION OF REVENUES COLLECTED UNDER THE LOCAL SALES AND USE TAX ACT

Chief Sponsor: David P. Hinkins
House Sponsor: Christine F. Watkins

LONG TITLE

General Description:

This bill amends the Local Sales and Use Tax Act to address the distribution of revenues.

Highlighted Provisions:

This bill:

- modifies the distribution of revenues under the Local Sales and Use Tax Act; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-12-204, as last amended by Laws of Utah 2009, Chapters 203 and 385
59-12-205, as last amended by Laws of Utah 2009, Chapters 92 and 203
59-12-2103, as enacted by Laws of Utah 2008, Chapter 323

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

Section 1. Section 59-12-204 is amended to read:

59-12-204. Sales and use tax ordinance provisions -- Tax rate -- Distribution of tax revenues -- Commission requirement to retain an amount to be deposited into the Qualified Emergency Food Agencies Fund.

(1) The tax ordinance adopted pursuant to this part shall impose a tax upon those transactions listed in Subsection 59-12-103(1).

(2) (a) The tax ordinance under Subsection (1) shall include a provision imposing a tax upon every transaction listed in Subsection 59-12-103(1) made within a county, including areas contained within the cities and towns located in the county:

(i) at the rate of 1% of the purchase price paid or charged; and

(ii) if the location of the transaction is [~~consummated~~] within the county [~~in accordance with Section 59-12-205~~] as determined under Sections 59-12-211 through 59-12-215.

(b) Notwithstanding Subsection (2)(a), a tax ordinance under this Subsection (2) shall include a provision prohibiting a county, city, or town from imposing a tax under this section on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104.

(3) Such tax ordinance shall include provisions substantially the same as those contained in Part 1, Tax Collection, insofar as they relate to sales or use tax, except that the name of the county as the taxing agency shall be substituted for that of the state where necessary for the purpose of this part and that an additional license is not required if one has been or is issued under Section 59-12-106.

(4) Such tax ordinance shall include a provision that the county shall contract, prior to the effective date of the ordinance, with the commission to perform all functions incident to the administration or operation of the ordinance.

(5) Such tax ordinance shall include a provision that the sale, storage, use, or other consumption of tangible personal property, the purchase price or the cost of which has been subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this part by any county, city, or town in any other county in this state, shall be exempt from the tax due under this ordinance.

(6) Such tax ordinance shall include a provision that any person subject to the provisions of a city or town sales and use tax shall be exempt from the county sales and use tax if the city or town sales and use tax is levied under an ordinance including provisions in substance as follows:

(a) a provision imposing a tax upon every transaction listed in Subsection 59-12-103(1) made within the city or town at the rate imposed by the county in which it is situated pursuant to Subsection (2);

(b) notwithstanding Subsection (2)(a), a provision prohibiting the city or town from imposing a tax under this section on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104;

(c) provisions substantially the same as those contained in Part 1, Tax Collection, insofar as they relate to sales and use taxes, except that the name of the city or town as the taxing agency shall be substituted for that of the state where necessary for the purposes of this part;

(d) a provision that the city or town shall contract prior to the effective date of the city or town sales and use tax ordinance with the commission to perform all functions incident to the administration or operation of the sales and use tax ordinance of the city or town;

(e) a provision that the sale, storage, use, or other consumption of tangible personal property, the gross receipts from the sale of or the cost of which has been subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this part by any county other than the county in which the city or town is located, or city or town in this state, shall be exempt from the tax; and

(f) a provision that the amount of any tax paid under Part 1, Tax Collection, shall not be included as a part of the purchase price paid or charged for a taxable item.

(7) Notwithstanding any other provision of this section, beginning July 1, 2000, the commission shall:

(a) determine and retain the portion of sales and use tax imposed under this section:

(i) by each county and by each city and town within that county whose legislative body consents by resolution to the commission's retaining and depositing sales and use tax revenues as provided in this Subsection (7); and

(ii) that is equal to the revenues generated by a 1/64% tax rate;

(b) deposit the revenues described in Subsection (7)(a) into a special fund of the county, or a city, town, or other political subdivision of the state located within that county, that has issued bonds to finance sports or recreational facilities or that is leasing sports or recreational facilities, in order to repay those bonds or to pay the lease payments; and

(c) continue to deposit those revenues into the special fund only as long as the bonds or leases are outstanding.

(8) (a) Notwithstanding any other provision of this section, beginning on July 1, 2009, the commission shall calculate and retain a portion of the sales and use tax collected under this part as provided in this Subsection (8).

(b) For a city, town, or unincorporated area of a county that imposes a tax under this part, the commission shall calculate a percentage each month by dividing the sales and use tax collected under this part for that month within the boundaries of that city, town, or unincorporated area of a county by the total sales and use tax collected under this part for that month within the boundaries of all of the cities, towns, and unincorporated areas of the counties that impose a tax under this part.

(c) For a city, town, or unincorporated area of a county that imposes a tax under this part, the commission shall retain each month an amount equal to the product of:

(i) the percentage the commission determines for the month under Subsection (8)(b) for the city, town, or unincorporated area of a county; and

(ii) $25,417.

(d) The commission shall deposit an amount the commission retains in accordance with this Subsection (8) into the Qualified Emergency Food Agencies Fund created by Section 9-4-1409.

(e) An amount the commission deposits into the Qualified Emergency Food Agencies Fund shall be expended as provided in Section 9-4-1409.

Section 2. Section 59-12-205 is amended to read:

59-12-205. Ordinances to conform with statutory amendments -- Distribution of tax revenues -- Determination of population.

(1) [~~Each~~] A county, city, [~~and~~] or town, in order to maintain in effect sales and use tax ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of [~~any~~] an amendment [~~of any~~] to an applicable [~~provisions~~] provision of Part 1, Tax Collection, adopt amendments [~~of their respective~~] to the county's, city's, or town's sales and use tax ordinances as required to conform [~~with~~] to the amendments to Part 1, Tax Collection[~~, insofar as they relate to sales and use taxes~~].

(2) Except as provided in Subsections (3) through (5) and subject to Subsection (6):

(a) 50% of each dollar collected from the sales and use tax authorized by this part shall be [~~paid~~] distributed to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and

(b) (i) except as provided in Subsection (2)(b)(ii), 50% of each dollar collected from the sales and use tax authorized by this part shall be [~~paid~~] distributed to each county, city, and town on the basis of the location [~~where~~] of the transaction [~~is consummated~~] as determined under Sections 59-12-211 through 59-12-215; and

(ii) 50% of each dollar collected from the sales and use tax authorized by this part within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, shall be [~~paid~~] distributed to the military installation development authority created in Section 63H-1-201.

(3) (a) Beginning on July 1, 2011, and ending on June 30, 2016, the commission shall each year distribute to a county, city, or town the distribution required by this Subsection (3) if:

(i) the county, city, or town is a:

(A) county of the third, fourth, fifth, or sixth class;

(B) city of the fifth class; or

(C) town;

(ii) the county, city, or town received a distribution under this section for the calendar year beginning on January 1, 2008, that was less than the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007;

(iii) (A) for a county described in Subsection (3)(a)(i)(A), the county had located within the unincorporated area of the county for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal

Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), the city or town had located within the city or town for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(iv) (A) for a county described in Subsection (3)(a)(i)(A), at least one establishment described in Subsection (3)(a)(iii)(A) located within the unincorporated area of the county for one more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), at least one establishment described in Subsection (3)(a)(iii)(B) located within a city or town for one or more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1.

(b) The commission shall make the distribution required by this Subsection (3) to a county, city, or town described in Subsection (3)(a):

(i) from the distribution required by Subsection (2)(a); and

(ii) before making any other distribution required by this section.

(c) (i) For purposes of this Subsection (3), the distribution is the amount calculated by multiplying the fraction calculated under Subsection (3)(c)(ii) by $333,583.

(ii) For purposes of Subsection (3)(c)(i):

(A) the numerator of the fraction is the difference calculated by subtracting the distribution a county, city, or town described in Subsection (3)(a) received under this section for the calendar year beginning on January 1, 2008, from the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007; and

(B) the denominator of the fraction is $333,583.

(d) A distribution required by this Subsection (3) is in addition to any other distribution required by this section.

[~~(3)~~] (4) (a) For fiscal years beginning with fiscal year 1983-84 and ending with fiscal year 2005-06, a county, city, or town may not receive a tax revenue distribution less than .75% of the taxable sales within the boundaries of the county, city, or town.

(b) The commission shall proportionally reduce monthly distributions to any county, city, or town that, but for the reduction, would receive a distribution in excess of 1% of the sales and use tax revenue collected within the boundaries of the county, city, or town.

[~~(4)~~] (5) (a) As used in this Subsection [~~(4)~~] (5):

(i) "Eligible county, city, or town" means a county, city, or town that receives $2,000 or more in tax revenue distributions in accordance with Subsection [~~(3)~~] (4) for each of the following fiscal years:

(A) fiscal year 2002-03;

(B) fiscal year 2003-04; and

(C) fiscal year 2004-05.

(ii) "Minimum tax revenue distribution" means the greater of:

(A) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2000-01; or

(B) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) (i) [~~Notwithstanding Subsection (2) and except~~] Except as provided in Subsection [~~(4)~~] (5)(b)(ii), beginning with fiscal year 2006-07 and ending with fiscal year 2012-13, an eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

(A) the payment required by Subsection (2); or

(B) the minimum tax revenue distribution.

(ii) If the tax revenue distribution required by Subsection [~~(4)~~] (5)(b)(i) for an eligible county, city, or town is equal to the amount described in Subsection [~~(4)~~] (5)(b)(i)(A) for three consecutive fiscal years, for fiscal years beginning with the fiscal year immediately following that three consecutive fiscal year period, the eligible county, city, or town shall receive the tax revenue distribution equal to the payment required by Subsection (2).

(c) For a fiscal year beginning with fiscal year 2013-14 and ending with fiscal year 2015-16, an eligible county, city, or town shall receive the minimum tax revenue distribution for that fiscal year if for fiscal year 2012-13 the payment required by Subsection (2) to that eligible county, city, or town is less than or equal to the product of:

(i) the minimum tax revenue distribution; and

(ii) .90.

[~~(5)~~] (6) (a) Population figures for purposes of this section shall be based on the most recent official census or census estimate of the United States Census Bureau.

(b) If a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

[~~(6)~~] (c) The population of a county for purposes of this section shall be determined [~~solely~~] only from the unincorporated area of the county.

Section 3. Section 59-12-2103 is amended to read:

59-12-2103. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected from the tax -- Administration, collection, and enforcement of tax by commission -- Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.

(1) (a) Subject to the other provisions of this section and except as provided in Subsection (2), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or town would have received a tax revenue distribution of less than .75% of the taxable sales within the boundaries of the city or town but for Subsection 59-12-205[~~(3)~~](4)(a), the city or town legislative body may impose a sales and use tax of up to .20% on the transactions:

(i) described in Subsection 59-12-103(1); and

(ii) within the city or town.

(b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall expend the revenues collected from the tax for the same purposes for which the city or town may expend the city's or town's general fund revenues.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(2) (a) A city or town legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food ingredients.

(b) A city or town legislative body imposing a tax under this section shall impose the tax on amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(3) To impose a tax under this part, a city or town legislative body shall obtain approval from a majority of the members of the city or town legislative body.

(4) The commission shall transmit revenues collected within a city or town from a tax under this part:

(a) to the city or town legislative body;

(b) monthly; and

(c) by electronic funds transfer.

(5) (a) Except as provided in Subsection (5)(b), the commission shall administer, collect, and enforce a tax under this part in accordance with:

(i) the same procedures used to administer, collect, and enforce the tax under:

(A) Part 1, Tax Collection; or

(B) Part 2, Local Sales and Use Tax Act; and

(ii) Chapter 1, General Taxation Policies.

(b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

(6) (a) The commission may retain an amount of tax collected under this part of not to exceed the lesser of:

(i) 1.5%; or

(ii) an amount equal to the cost to the commission of administering this part.

(b) Any amount the commission retains under Subsection (6)(a) shall be:

(i) deposited into the Sales and Use Tax Administrative Fees Account; and

(ii) used as provided in Subsection 59-12-206(2).

(7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (7)(a)(i) from the city or town.

(ii) The notice described in Subsection (7)(a)(i)(B) shall state:

(A) that the city or town will enact or repeal a tax or change the rate of the tax under this part;

(B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

(C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

(D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (7)(a)(ii)(A), the rate of the tax.

(b) (i) If the billing period for a transaction begins before the enactment of the tax or the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that

began before the effective date of the repeal of the tax or the tax rate decrease.

(c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (7)(a)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate of the tax under Subsection (7)(a)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

(ii) The notice described in Subsection (7)(d)(i)(B) shall state:

(A) that the annexation described in Subsection (7)(d)(i)(B) will result in the enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

(C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and

(D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (7)(d)(ii)(A), the rate of the tax.

(e) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease.

(f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (7)(d)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change under Subsection (7)(d)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale".

Section 4. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 199
S. B. 86
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

SUNSET REAUTHORIZATIONS

Chief Sponsor: Scott K. Jenkins
House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill reauthorizes certain state entities and programs that would otherwise sunset before the 2012 or 2013 Annual General Session of the Utah Legislature.

Highlighted Provisions:

This bill:

- reauthorizes certain named state entities and programs that are scheduled to sunset before the 2012 or 2013 Annual General Session; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-226, as last amended by Laws of Utah 2010, Chapter 179
63I-1-231, as last amended by Laws of Utah 2010, Chapters 68 and 319
63I-1-253, as last amended by Laws of Utah 2010, Chapters 79, 160, and 319
63I-1-261, as last amended by Laws of Utah 2009, Chapter 334
63I-1-263, as last amended by Laws of Utah 2010, Chapters 319 and 358
63I-1-269, as last amended by Laws of Utah 2008, Chapter 384 and renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63I-1-226 is amended to read:

63I-1-226. Repeal dates, Title 26.

(1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2015.

(2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1, 2013.

(3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.

(4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed July 1, [~~2011~~] 2016.

(5) Title 26, Chapter 36a, Hospital Provider [~~and~~] Assessment Act, is repealed July 1, 2013.

Section 2. Section 63I-1-231 is amended to read:

63I-1-231. Repeal dates, Title 31A.

(1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2015.

(2) Section 31A-2-217, Coordination with other states, is repealed July 1, 2013.

[~~(3) Section 31A-22-625, Catastrophic coverage of mental health conditions, is repealed July 1, 2011.~~]

[~~(4)~~] (3) Title 31A, Chapter 42a, Utah Statewide Risk Adjuster Act, is repealed July 1, 2016.

Section 3. Section 63I-1-253 is amended to read:

63I-1-253. Repeal dates, Titles 53, 53A, 53B, and 53C.

The following provisions are repealed on the following dates:

(1) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

(2) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is repealed July 1, 2020.

(3) Title 53A, Chapter 1a, Part 9, Voluntary Extended-day Kindergarten Program, is repealed July 1, 2011.

(4) Section 53A-2-118.3 is repealed December 31, 2016.

(5) The State Instructional Materials Commission, created in Section 53A-14-101, is repealed July 1, [~~2011~~] 2016.

(6) Subsections 53A-16-107(3) and (4) are repealed December 31, 2016.

(7) Section 53A-16-107.1 is repealed December 31, 2016.

(8) Section 53A-17a-163, Performance-based Compensation Pilot Program is repealed July 1, [~~2011~~] 2016.

(9) Subsection 53C-3-203(5), which provides for the distribution of money from the Land Exchange Distribution Account to the Geological Survey for test wells, other hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

Section 4. Section 63I-1-261 is amended to read:

63I-1-261. Repeal dates, Title 61.

[~~Title 61, Chapter 1, Utah Uniform Securities Act, is repealed July 1, 2011.~~]

Section 5. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63 to 63M.

(1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to any public school district which chooses to participate, is repealed July 1, 2016.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

(3) Section 63C-8-106, Rural residency training program, is repealed July 1, 2015.

(4) Subsection 63G-6-502(5)(b)(ii) authorizing certain transportation agencies to award a contract for a design-build transportation project in certain circumstances, is repealed July 1, 2015.

(5) The Resource Development Coordinating Committee, created in Section 63J-4-501, is repealed July 1, 2015.

(6) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

(7) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed July 1, 2020.

(b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2011.

(c) Notwithstanding Subsection (7)(b), a person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after July 1, 2010.

(d) Notwithstanding Subsections (7)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before June 30, 2010.

[~~(8) Title 63M, Chapter 7, Part 4, Sentencing Commission, is repealed January 1, 2012.~~]

[~~(9)~~] (8) The Crime Victim Reparations Board, created in Section 63M-7-504, is repealed July 1, 2017.

[~~(10)~~] (9) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed July 1, 2011.

[~~(11)~~] (10) Title 63M, Chapter 9, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2016.

[~~(12)~~] (11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2012.

Section 6. Section 63I-1-269 is amended to read:

63I-1-269. Repeal dates, Title 69.

Section 69-2-5.6, Emergency services telecommunications charge to fund statewide unified E-911 emergency service, is repealed July 1, [~~2011~~] 2021.

CHAPTER 200
S. B. 90
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

BOARD OF PARDONS
RETIREMENT AMENDMENTS

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending public safety retirement provisions.

Highlighted Provisions:

This bill:

- amends the definition of "public safety service" to include a full-time member of the Board of Pardons and Parole for the Public Safety Contributory Retirement System, the Public Safety Noncontributory Retirement System, and the New Public Safety and Firefighter Tier II Contributory Retirement System; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-14-102, as last amended by Laws of Utah 2003, Chapter 240
49-15-102, as last amended by Laws of Utah 2003, Chapters 131 and 240
49-23-102, as enacted by Laws of Utah 2010, Chapter 266

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

Section 1. Section 49-14-102 is amended to read:

49-14-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income which are received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts the public safety service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, including a residence, use of equipment or uniform, travel, or similar payments;

(v) a lump-sum payment or special payments covering accumulated leave; and

(vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement, subject to Subsections (2)(a) and (b).

(a) Except as provided in Subsection (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (2)(a) may be exceeded if:

(i) the public safety service employee has transferred from another agency; or

(ii) the public safety service employee has been promoted to a new position.

(3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a public safety service employee.

(4) "Participating employer" means an employer which meets the participation requirements of Section 49-14-201.

(5) (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

(i) law enforcement officer in accordance with Section 53-13-103;

(ii) correctional officer in accordance with Section 53-13-104; [~~and~~]

(iii) special function officer approved in accordance with Sections 49-14-201 and 53-13-105[~~.~~]; and

(iv) full-time member of the Board of Pardons and Parole created under Section 77-27-2.

(b) Except as provided under Subsection (5)(a)(iv), "public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(c) Except for the minimum hour requirement, Subsections (5)(a) and (b) do not apply to any person

who was eligible for service credit in this system [~~prior to~~] before January 1, 1984.

(6) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(7) "System" means the Public Safety Contributory Retirement System created under this chapter.

(8) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a public safety service employee was employed by a participating employer, including time the public safety service employee was absent in the service of the United States government on military duty.

Section 2. Section 49-15-102 is amended to read:

49-15-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;

(v) a lump-sum payment or special payment covering accumulated leave; and

(vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (2)(a) and (b).

(a) Except as provided in Subsection (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (2)(a) may be exceeded if:

(i) the public safety service employee has transferred from another agency; or

(ii) the public safety service employee has been promoted to a new position.

(3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a public safety service employee.

(4) "Participating employer" means an employer which meets the participation requirements of Section 49-15-201.

(5) (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

(i) law enforcement officer in accordance with Section 53-13-103;

(ii) correctional officer in accordance with Section 53-13-104; [~~and~~]

(iii) special function officer approved in accordance with Sections 49-15-201 and 53-13-105[~~.~~]; and

(iv) full-time member of the Board of Pardons and Parole created under Section 77-27-2.

(b) Except as provided under Subsection (5)(a)(iv), "public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(6) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(7) "System" means the Public Safety Noncontributory Retirement System created under this chapter.

(8) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a public safety service employee was employed by a participating employer, including time the public safety service employee was absent in the service of the United States government on military duty.

Section 3. Section 49-23-102 is amended to read:

49-23-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating

employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;

(v) a lump-sum payment or special payment covering accumulated leave; and

(vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.

(3) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and (d).

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

(4) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) "Participating employer" means an employer which meets the participation requirements of:

(a) Sections 49-14-201 and 49-14-202;

(b) Sections 49-15-201 and 49-15-202;

(c) Sections 49-16-201 and 49-16-202; or

(d) Sections 49-23-201 and 49-23-202.

(7) (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

(i) law enforcement officer in accordance with Section 53-13-103;

(ii) correctional officer in accordance with Section 53-13-104; [~~and~~]

(iii) special function officer approved in accordance with Sections 49-15-201 and 53-13-105[~~.~~]; and

(iv) full-time member of the Board of Pardons and Parole created under Section 77-27-2.

(b) Except as provided under Subsection (7)(a)(iv), "public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(8) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(9) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.

(10) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:

(i) has been trained in firefighter techniques and skills;

(ii) continues to receive regular firefighter training; and

(iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.

(b) An individual that volunteers assistance but does not meet the requirements of Subsection (10)(a) is not a volunteer firefighter for purposes of this chapter.

(11) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board; or

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

CHAPTER 201
S. B. 102
Passed February 9, 2011
Approved March 22, 2011
Effective May 10, 2011

TEMPORARY WATER SHORTAGE EMERGENCY - MILITARY FACILITIES

Chief Sponsor: Ralph Okerlund
House Sponsor: John G. Mathis

LONG TITLE

General Description:

This bill provides for special priority for the use of water by a military facility during a temporary water shortage emergency.

Highlighted Provisions:

This bill:

- defines "military facility";
- provides for special priority for the use of water by a military facility during a temporary water shortage emergency; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-21.1, as enacted by Laws of Utah 2010, Chapter 252

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

Section 1. Section 73-3-21.1 is amended to read:

73-3-21.1. Priorities between appropriators.

(1) As used in this section[~~, "temporary~~]:

(a) "Military facility" means an installation, base, air field, camp, post, station, yard, center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United States Department of Defense or the National Guard.

(b) "Temporary water shortage emergency" means a shortage of water:

[~~(a)~~] (i) whether caused by drought, manmade, or naturally caused;

[~~(b)~~] (ii) for which the governor has declared an emergency; and

[~~(c)~~] (iii) that may not exceed in duration more than two consecutive calendar years.

(2) (a) Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.

(b) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for drinking, sanitation, and fire suppression has a preferential right over any other water right for the duration of the temporary water shortage emergency if:

(i) the water is used by:

(A) an individual water user;

(B) a county or municipality; [~~or~~]

(C) a public water supplier, as defined in Section 73-1-4; [~~and~~] or

(D) a military facility that was in operation on March 10, 2011; and

(ii) the water is used without unnecessary waste.

(c) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for agricultural purposes, including irrigation and livestock water, has a preferential right over any other right, except as provided in Subsection (2)(b).

(3) A person using water preferentially during a temporary water shortage emergency shall pay annually to the appropriator whose water use is interrupted the reasonable value of the water use interrupted, crop losses, and other consequential damages incurred as a result of the interruption.

CHAPTER 202
S. B. 118
Passed February 9, 2011
Approved March 22, 2011
Effective May 10, 2011

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT AMENDMENTS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Julie Fisher

LONG TITLE

General Description:

This bill modifies the Multistate Highway Transportation Agreement by changing the name from the Multistate Highway Transportation Agreement to the Western States Transportation Alliance.

Highlighted Provisions:

This bill:

- changes the name of the Multistate Highway Transportation Agreement to the Western States Transportation Alliance; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-23-1, as enacted by Laws of Utah 1981, Chapter 179
41-23-2, as last amended by Laws of Utah 2001, Chapter 72

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

Section 1. Section 41-23-1 is amended to read:

CHAPTER 23. WESTERN STATES TRANSPORTATION ALLIANCE

41-23-1. Enactment.

The [~~Multistate Highway Transportation Agreement~~] Western States Transportation Alliance is hereby enacted into law and entered into with all other jurisdictions legally joining therein.

Section 2. Section 41-23-2 is amended to read:

41-23-2. Text.

The text of this [~~agreement~~] alliance is as follows:

[~~MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT~~]
WESTERN STATES TRANSPORTATION ALLIANCE

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

ARTICLE I
Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive; and

(e) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for their economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(b) Establish a system recommending the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

(f) Study and recommend appropriate highway user fees.

(g) Facilitate communication between legislators, state transportation administrators, and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE II
Definitions

Section 1. As used in this agreement:

(a) "Cooperating Committee" means a body composed of the designated representatives from the participating jurisdictions.

(b) "Designated representative" means a legislator or other person authorized under Article XII to represent the jurisdiction.

(c) "Jurisdiction" means a state of the United States or the District of Columbia.

(d) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III
General Provisions

Section 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. Restrictions, Conditions or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

Section 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV
Cooperating Committee

Section 1. Each participating jurisdiction shall have two designated representatives. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute the Cooperating Committee which shall have the power to:

(a) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

(d) Recommend improvements in highway operations, in vehicular safety, and in state administration of highway transportation laws.

(e) Perform functions necessary to facilitate the purposes of this agreement.

Section 2. Each designated representative of a participating jurisdiction shall be entitled to one vote only. No action of the committee shall be approved unless a majority of the total number of votes cast by the designated representatives of the participating jurisdictions are in favor of the action.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the Legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable.

ARTICLE V
Objectives of the Participating Jurisdictions

Section 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$W=500\{LN/(N-1)+12N+36\}$ where W = maximum weight in pounds carried on any group of two or more consecutive axles computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that the operation of a vehicle or combination of vehicles in interstate commerce according to the provisions of subsection (a) of this section be authorized under special permit authority by each participating jurisdiction for vehicle combinations in excess of statutory weights of 80,000 pounds or statutory lengths.

(c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(d) The Cooperating Committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional and economic needs and to promote an efficient, safe, and compatible transportation network;

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety; and

(3) Establish programs to increase productivity and reduce congestion, fuel consumption, and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

ARTICLE VI
Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by cancelling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII
Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII
Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules or regulations adopted thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX
Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE X
State Government Departments Authorized to Cooperate with Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies and officers of the government of this state shall cooperate with and assist the Cooperating Committee within the scope contemplated by article IV, section 1 (a) and (b) of the agreement. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said Cooperating Committee.

ARTICLE XI
Funding Section

Section 1. Funds for the administration of this agreement, including participation in the Cooperating Committee and the actual expenses of the designated representatives, shall be budgeted or expensed as determined appropriate.

ARTICLE XII
Selection of Designated Representatives

Section 1. The process for selecting the designated representatives to the Cooperating Committee shall be established by law under this section.

Section 2. The persons authorized to represent the state of Utah as the designated representatives to the committee shall be the chairperson of the Senate Transportation Committee and the chairperson of the House Transportation

Committee or a legislator or a state agency official that the chairperson assigns.

Section 3. The transportation chairpersons in each house shall also designate one alternative designated representative who shall also be a legislator or state agency official to serve in their absence.

CHAPTER 203
S. B. 121
Passed February 9, 2011
Approved March 22, 2011
Effective May 10, 2011

NEW AUTOMOBILE FRANCHISE ACT AMENDMENTS

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: Holly J. Richardson

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act.

Highlighted Provisions:

This bill:

- specifies a plan or system that a franchisor may not adopt, change, establish, enforce, modify, or implement for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees; and
- modifies the distance within which a relocation of an existing franchisee's dealership is considered to be the establishment of an additional franchise in the line-make of the relocating franchise.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-14-201, as last amended by Laws of Utah 2010, Chapter 33
13-14-302, as last amended by Laws of Utah 2010, Chapter 33

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

Section 1. Section 13-14-201 is amended to read:

13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.

(1) A franchisor may not in this state:

(a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to:

(i) participate monetarily in any advertising campaign; or

(ii) contest, or purchase any promotional materials, display devices, or display decorations or materials;

(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;

(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

(i) maintains a reasonable line of credit for each make or line of vehicles; and

(ii) complies with reasonable capital and facilities requirements of the franchisor;

(e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:

(i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or

(ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;

(f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable or cause the franchisee to lose control of the premises or impose any other unreasonable requirement related to the facilities or premises;

(g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;

(h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;

(i) adopt, change, establish, enforce, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable, including a plan or system that imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance, without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on commercially reasonable terms;

(j) increase the price of any new motor vehicle that the franchisee has ordered from the franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser if the order was made prior to the franchisee's receipt of an official written price increase notification;

(k) fail to indemnify and hold harmless its franchisee against any judgment for damages or settlement approved in writing by the franchisor:

(i) including court costs and attorney fees arising out of actions, claims, or proceedings including those based on:

(A) strict liability;

(B) negligence;

(C) misrepresentation;

(D) express or implied warranty;

(E) revocation as described in Section 70A-2-608; or

(F) rejection as described in Section 70A-2-602; and

(ii) to the extent the judgment or settlement relates to alleged defective or negligent actions by the franchisor;

(l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;

(m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;

(n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing dealer facility or facilities, including by:

(i) requiring or otherwise coercing a franchisee to exclude or remove from the franchisee's facility operations the selling or servicing of a line-make of vehicles for which the franchisee has a franchise agreement to utilize the facilities; or

(ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or line-make in an existing facility owned or occupied by the franchisee that includes the selling or servicing of another franchise or line-make at the facility provided that the franchisee gives the franchisor written notice of the franchise co-location;

(o) fail to include in any franchise agreement or other agreement governing a franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise the following language or language to the effect that: "If any provision in this agreement contravenes the laws or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.";

(p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;

(q) engage in the distribution or sale of a recreational vehicle that is manufactured, rented, sold, or offered for sale in this state without being constructed in accordance with the standards set by the American National Standards Institute for recreational vehicles and evidenced by a seal or plate attached to the vehicle;

(r) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on motor vehicles, except warranty service repairs:

(i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's motor vehicles; or

(ii) on owned motor vehicles by a person or government entity who has purchased new motor vehicles pursuant to a franchisor's fleet discount program;

(s) fail to provide a franchisee with a written franchise agreement;

(t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other provisions of this chapter:

(A) unreasonably fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make;

(B) unreasonably require a dealer to:

(I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

(II) purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles;

(ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a line-make between motor home and travel trailer products;

(u) except as provided in Subsection (6), directly or indirectly:

(i) own an interest in a new motor vehicle dealer or dealership;

(ii) operate or control a new motor vehicle dealer or dealership;

(iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or

(iv) operate a motor vehicle service facility;

(v) fail to timely pay for all reimbursements to a franchisee for incentives and other payments made by the franchisor;

(w) directly or indirectly influence or direct potential customers to franchisees in an inequitable manner, including:

(i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the franchisee's products or services in an amount exceeding the actual cost of the referral;

(ii) giving a customer referral to a franchisee on the condition that the franchisee agree to sell the vehicle at a price fixed by the franchisor; or

(iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;

(x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;

(y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;

(z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;

(aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:

(i) monthly financial statements provided by the franchisee;

(ii) the profitability of a franchisee; or

(iii) the status of a franchisee's inventory of products;

(bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:

(i) is designed and administered in a fair, reasonable, and equitable manner;

(ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and

(iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:

(A) how the standard or program is designed;

(B) how the standard or program will be administered; and

(C) the types of data that will be collected and used in the application of the standard or program;

(cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;

(dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(dd) may not be construed to limit the right of a financing subsidiary to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing;

(ee) condition the franchisor's participation in co-op advertising for a product category on the franchisee's participation in any program related to another product category or on the franchisee's achievement of any level of sales in a product category other than that which is the subject of the co-op advertising;

(ff) except as provided in Subsections (7) through (9), discriminate against a franchisee in the state in favor of another franchisee of the same line-make in the state:

(i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is made available by the franchisor to another franchisee in the state during a similar time period;

(ii) except as provided in Subsection (8), by using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle to one franchisee in the state at a higher price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is made available by the franchisor to another franchisee in the state during a similar time period;

(iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair, equitable, and timely manner; or

(iv) if the franchisee complies with any reasonable requirement concerning the sale of new motor vehicles, by using or considering the performance of any of its franchisees located in this state relating to the sale of the franchisor's new motor vehicles in determining the:

(A) dealer's eligibility to purchase program, certified, or other used motor vehicles from the franchisor;

(B) volume, type, or model of program, certified, or other used motor vehicles the dealer is eligible to purchase from the franchisor;

(C) price of any program, certified, or other used motor vehicles that the dealer is eligible to purchase from the franchisor; or

(D) availability or amount of any discount, credit, rebate, or sales incentive the dealer is eligible to receive from the manufacturer for the purchase of any program, certified, or other motor vehicle offered for sale by the franchisor;

(gg) (i) take control over funds owned or under the control of a franchisee based on the findings of a warranty audit or sales incentive audit unless the following conditions are satisfied:

(A) the franchisor fully identifies in writing the basis for the franchisor's claim or charge back arising from the audit, including notifying the franchisee that the franchisee has 20 days from the day on which the franchisee receives the

franchisor's claim or charge back to assert a protest in writing to the franchisor identifying the basis for the protest;

(B) the franchisee's protest shall inform the franchisor that the protest shall be submitted to a mediator in the state who is identified by name and address in the franchisee's notice to the franchisor;

(C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no later than 30 days after the day on which the franchisor receives the franchisee's protest of a claim or charge back;

(D) if mediation does not lead to a resolution of the protest, the protest shall be set for binding arbitration in the same venue in which the mediation occurred;

(E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

(I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

(II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

(F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive audits;

(G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably believes that the amount of the claim or charge back is related to a fraudulent act by the franchisee; and

(H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall be shared equally by the franchisor and the franchisee; or

(ii) require a franchisee to execute a written waiver of the requirements of Subsection (1)(gg)(i);

(hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product manufactured by the franchisor, or obtained by the franchisor for resale from a third-party supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential status from the franchisor;

(ii) through an affiliate, take any action that would otherwise be prohibited under this chapter;

(jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the cost of a warranty repair for which the franchisee is paid by the franchisor;

(kk) directly or indirectly condition any of the following actions on the willingness of a franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter into a site-control agreement:

(i) the awarding of a franchise to a prospective new franchisee;

(ii) the addition of a line-make or franchise to an existing franchisee;

(iii) the renewal of an existing franchisee's franchise;

(iv) the approval of the relocation of an existing franchisee's dealership facility, unless the franchisor pays, and the franchisee voluntarily accepts, additional specified cash consideration to facilitate the relocation; or

(v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the sale or transfer;

(ll) subject to Subsection (11), deny a franchisee the right to return any or all parts or accessories that:

(i) were specified for and sold to the franchisee under an automated ordering system required by the franchisor; and

(ii) (A) are in good, resalable condition; and

(B) (I) the franchisee received within the previous 12 months; or

(II) are listed in the current parts catalog; or

(mm) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's right, by threatening:

(i) to impose a detriment upon the franchisee's business; or

(ii) to withhold any entitlement, benefit, or service:

(A) to which the franchisee is entitled under a franchise agreement, contract, statute, rule, regulation, or law; or

(B) that has been granted to more than one other franchisee of the franchisor in the state.

(2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to perform warranty service repairs on motor vehicles if the warranty services is for a franchisor of recreational vehicles.

(3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee carry a reasonable inventory of:

(a) new motor vehicle models offered for sale by the franchisor; and

(b) parts to service the repair of the new motor vehicles.

(4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee maintain separate sales personnel or display space.

(5) Upon the written request of any franchisee, a franchisor shall disclose in writing to the franchisee the basis on which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the franchisor's dealers of the same line-make.

(6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a period not to exceed 12 months if:

(i) (A) the person from whom the franchisor acquired the interest in or control of the new motor vehicle dealership was a franchised new motor vehicle dealer; and

(B) the franchisor's interest in the new motor vehicle dealership is for sale at a reasonable price and on reasonable terms and conditions; or

(ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new motor vehicle dealership by a person who:

(A) is part of a group that has been historically underrepresented in the franchisor's dealer body;

(B) would not otherwise be able to purchase a new motor vehicle dealership;

(C) has made a significant investment in the new motor vehicle dealership which is subject to loss;

(D) has an ownership interest in the new motor vehicle dealership; and

(E) operates the new motor vehicle dealership under a plan to acquire full ownership of the dealership within a reasonable period of time and under reasonable terms and conditions.

(b) After receipt of the advisory board's recommendation, the executive director may, for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional period not to exceed 12 months.

(c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle service facilities after May 1, 2000.

(d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new motor vehicle dealership trading in a line-make of motor vehicle if:

(i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

(ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;

(iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;

(iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and

(v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.

(7) Subsection (1)(ff) does not apply to recreational vehicles.

(8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is functionally available to all competing franchisees of the same line-make in the state on substantially comparable terms.

(9) Subsection (1)(ff)(iii) may not be construed to:

(a) permit provision of or access to customer information that is otherwise protected from disclosure by law or by contract between a franchisor and a franchisee; or

(b) require a franchisor to disregard the preference volunteered by a potential customer in providing or directing a lead.

(10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business practices in accordance with the usage of trade in which the affiliate is engaged.

(11) (a) Subsection (1)(ll) does not apply to parts or accessories that the franchisee ordered and purchased outside of an automated parts ordering system required by the franchisor.

(b) In determining whether parts or accessories in a franchisee's inventory were specified and sold under an automated ordering system required by the franchisor, the parts and accessories in the franchisee's inventory are presumed to be the most recent parts and accessories that the franchisor sold to the franchisee.

(12) (a) Subsection (1)(mm) does not apply to a good faith settlement of a dispute, including a dispute relating to contract negotiations, in which the franchisee gives a waiver in exchange for fair consideration in the form of a benefit conferred on the franchisee.

(b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver has been obtained in violation of Subsection (1)(mm).

Section 2. Section 13-14-302 is amended to read:

13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.

(1) Except as provided in Subsection (6), a franchisor shall provide the notice and documentation required under Subsection (2) if the franchisor seeks to:

(a) enter into a franchise agreement establishing a motor vehicle dealership within a relevant market

area where the same line-make is represented by another franchisee; or

(b) relocate an existing motor vehicle franchisee.

(2) (a) If a franchisor seeks to take an action listed Subsection (1), prior to taking the action, the franchisor shall, in writing, notify the advisory board and each franchisee in that line-make in the relevant market area.

(b) The notice required by Subsection (2)(a) shall:

(i) specify the intended action described under Subsection (1);

(ii) specify the good cause on which it intends to rely for the action; and

(iii) be delivered by registered or certified mail or by any form of reliable delivery through which receipt is verifiable.

(3) (a) Except as provided in Subsection (3)(c), the franchisor shall provide to the advisory board and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (2):

(i) (A) any aggregate economic data and all existing reports, analyses, or opinions based on the aggregate economic data that were relied on by the franchisor in reaching the decision to proceed with the action described in the notice; and

(B) the aggregate economic data under Subsection (3)(a)(i)(A) includes:

(I) motor vehicle registration data;

(II) market penetration data; and

(III) demographic data;

(ii) written documentation that the franchisor has in its possession that it intends to rely on in establishing good cause under Section 13-14-306 relating to the notice;

(iii) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will affect the amount of business transacted by other franchisees of the same line-make in the relevant market area, as compared to business available to the franchisees; and

(iv) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will be beneficial or injurious to the public welfare or public interest.

(b) The franchisor shall provide the documents described under Subsection (3)(a) with the notice required under Subsection (2).

(c) The franchisor is not required to disclose any documents under Subsection (3)(a) if:

(i) the documents would be privileged under the Utah Rules of Evidence;

(ii) the documents contain confidential proprietary information;

(iii) the documents are subject to federal or state privacy laws;

(iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or

(v) the franchisor reasonably believes that disclosure of the documents would violate:

(A) the privacy of another franchisee; or

(B) Section 13-14-201.

(4) (a) Within 45 days of receiving notice required by Subsection (2), any franchisee that is required to receive notice under Subsection (2) may protest to the advisory board the establishment or relocation of the dealership.

(b) When a protest is filed, the department shall inform the franchisor that:

(i) a timely protest has been filed;

(ii) a hearing is required;

(iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and

(iv) the franchisor may not establish or relocate a proposed dealership if the executive director determines that there is not good cause for permitting the establishment or relocation of the dealership.

(5) If multiple protests are filed under Subsection (4), hearings may be consolidated to expedite the disposition of the issue.

(6) Subsections (1) through (5) do not apply to a relocation of an existing or successor dealer to a location that is:

(a) within the same county and less than two aeronautical miles from the existing location of the existing or successor franchisee's dealership; or

(b) further away from a dealership of a franchisee of the same line-make.

(7) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of [~~one mile~~] two aeronautical miles from its existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;

(b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional motor vehicle dealership; and

(c) (i) except as provided in Subsection (7)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

(ii) the establishment of a temporary additional place of business by a recreational vehicle franchisee is not considered the establishment of an additional motor vehicle dealership if the

recreational vehicle franchisee is participating in a trade show where three or more recreational vehicle dealers are participating.

CHAPTER 204
S. B. 124
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

LEAVING A CHILD UNATTENDED IN A MOTOR VEHICLE

Chief Sponsor: Benjamin M. McAdams
House Sponsor: Lee B. Perry

LONG TITLE

General Description:

This bill amends the Utah Criminal Code by making it a class C misdemeanor to leave a child unattended in an enclosed compartment of a motor vehicle.

Highlighted Provisions:

This bill:

- defines terms;
- makes it a class C misdemeanor for a person who is responsible for a child under nine years of age to intentionally, recklessly, knowingly, or with criminal negligence leave a child in an enclosed compartment of a motor vehicle if:
  - the motor vehicle is on public property or private property that is open to the general public;
  - the child is not supervised by a person who is at least nine years old; and
  - the conditions present a risk to the child of hyperthermia, hypothermia, or dehydration;
- provides that this bill does not apply if the person's conduct that constitutes a violation of this bill is subject to a greater penalty under another provision of state law;
- preempts enforcement of a local law or ordinance that makes it an infraction or a criminal offense to engage in the conduct that constitutes a misdemeanor under this bill;
- provides that, notwithstanding any provision of state law to the contrary, a conviction under this bill may not be used by a state or local government entity as grounds for revoking, refusing to grant, or refusing to renew, a license or permit, including a license or permit relating to the provision of day care or child care.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
76-10-2202, Utah Code Annotated 1953

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

Section 1. Section 76-10-2202 is enacted to read:

76-10-2202. Leaving a child unattended in a motor vehicle.

(1) As used in this section:

(a) "Child" means a person who is younger than nine years old.

(b) "Enclosed compartment" means any enclosed area of a motor vehicle, including the passenger compartment, regardless of whether a door, window, or hatch is left open.

(c) "Motor vehicle" means an automobile, truck, truck tractor, bus, or any other self-propelled vehicle.

(2) A person who is responsible for a child is guilty of a class C misdemeanor if:

(a) the person intentionally, recklessly, knowingly, or with criminal negligence leaves the child in an enclosed compartment of a motor vehicle;

(b) the motor vehicle is on:

(i) public property; or

(ii) private property that is open to the general public;

(c) the child is not supervised by a person who is at least nine years old; and

(d) the conditions present a risk to the child of:

(i) hyperthermia;

(ii) hypothermia; or

(iii) dehydration.

(3) This section does not apply if the person's conduct that constitutes a violation of this section is subject to a greater penalty under another provision of state law.

(4) This section preempts enforcement of a local law or ordinance that makes it an infraction or a criminal offense to engage in the conduct that constitutes a misdemeanor under this section.

(5) Notwithstanding any provision of state law to the contrary, a conviction under this section may not be used by a state or local government entity as grounds for revoking, refusing to grant, or refusing to renew, a license or permit, including a license or permit relating to the provision of day care or child care.

CHAPTER 205
S. B. 126
Passed February 17, 2011
Approved March 22, 2011
Effective May 10, 2011

LOCAL DISTRICT SERVICE AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill enacts language related to a service provided by a local district.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes a local district to require that a service applicant provide:
  - an improvement;
  - an improvement assurance; and
  - an improvement assurance warranty;
- requires a local district to determine whether a completed improvement meets certain standards;
- prohibits a claim for money damages;
- authorizes a local district to impose an exaction;
- requires that a local district reconvey surplus real property in certain circumstances;
- prohibits a local district from imposing or collecting certain fees;
- requires that a local district establish a fee appeal process; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-102, as last amended by Laws of Utah 2010, Chapter 254
17D-1-106, as last amended by Laws of Utah 2009, Chapters 181 and 356

ENACTS:

17B-1-119, Utah Code Annotated 1953
17B-1-120, Utah Code Annotated 1953
17B-1-121, Utah Code Annotated 1953

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

Section 1. Section 17B-1-102 is amended to read:

17B-1-102. Definitions.

As used in this title:

(1) "Appointing authority" means the person or body authorized to make an appointment to the board of trustees.

(2) "Basic local district":

(a) means a local district that is not a specialized local district; and

(b) includes an entity that was, under the law in effect before April 30, 2007, created and operated as a local district, as defined under the law in effect before April 30, 2007.

(3) "Bond" means:

(a) a written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and

(b) a lease agreement, installment purchase agreement, or other agreement that:

(i) includes an obligation by the district to pay money; and

(ii) the district's board of trustees, in its discretion, treats as a bond for purposes of Title 11, Chapter 14, Local Government Bonding Act, or Title 11, Chapter 27, Utah Refunding Bond Act.

(4) "Cemetery maintenance district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 1, Cemetery Maintenance District Act, including an entity that was created and operated as a cemetery maintenance district under the law in effect before April 30, 2007.

(5) "Drainage district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 2, Drainage District Act, including an entity that was created and operated as a drainage district under the law in effect before April 30, 2007.

(6) "Facility" or "facilities" includes any structure, building, system, land, water right, water, or other real or personal property required to provide a service that a local district is authorized to provide, including any related or appurtenant easement or right-of-way, improvement, utility, landscaping, sidewalk, road, curb, gutter, equipment, or furnishing.

(7) "Fire protection district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 3, Fire Protection District Act, including an entity that was created and operated as a fire protection district under the law in effect before April 30, 2007.

(8) "General obligation bond":

(a) means a bond that is directly payable from and secured by ad valorem property taxes that are:

(i) levied:

(A) by the district that issues the bond; and

(B) on taxable property within the district; and

(ii) in excess of the ad valorem property taxes of the district for the current fiscal year; and

(b) does not include:

(i) a short-term bond;

(ii) a tax and revenue anticipation bond; or

(iii) a special assessment bond.

(9) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guarantee the proper completion of an improvement;

(b) that is required before a local district may provide a service requested by a service applicant; and

(c) that is offered to a local district to induce the local district before construction of an improvement begins to:

(i) provide the requested service; or

(ii) commit to provide the requested service.

(10) "Improvement assurance warranty" means a promise that the materials and workmanship of an improvement:

(a) comply with standards adopted by a local district; and

(b) will not fail in any material respect within an agreed warranty period.

[~~(9)~~] (11) "Improvement district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 4, Improvement District Act, including an entity that was created and operated as a county improvement district under the law in effect before April 30, 2007.

[~~(10)~~] (12) "Irrigation district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 5, Irrigation District Act, including an entity that was created and operated as an irrigation district under the law in effect before April 30, 2007.

[~~(11)~~] (13) "Local district" means a limited purpose local government entity, as described in Section 17B-1-103, that operates under, is subject to, and has the powers set forth in:

(a) this chapter; or

(b) (i) this chapter; and

(ii) (A) Chapter 2a, Part 1, Cemetery Maintenance District Act;

(B) Chapter 2a, Part 2, Drainage District Act;

(C) Chapter 2a, Part 3, Fire Protection District Act;

(D) Chapter 2a, Part 4, Improvement District Act;

(E) Chapter 2a, Part 5, Irrigation District Act;

(F) Chapter 2a, Part 6, Metropolitan Water District Act;

(G) Chapter 2a, Part 7, Mosquito Abatement District Act;

(H) Chapter 2a, Part 8, Public Transit District Act;

(I) Chapter 2a, Part 9, Service Area Act; or

(J) Chapter 2a, Part 10, Water Conservancy District Act.

[~~(12)~~] (14) "Metropolitan water district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 6, Metropolitan Water District Act, including an entity that was created and operated as a metropolitan water district under the law in effect before April 30, 2007.

[~~(13)~~] (15) "Mosquito abatement district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 7, Mosquito Abatement District Act, including an entity that was created and operated as a mosquito abatement district under the law in effect before April 30, 2007.

[~~(14)~~] (16) "Municipal" means of or relating to a municipality.

[~~(15)~~] (17) "Municipality" means a city or town.

(18) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or other legal entity.

[~~(16)~~] (19) "Political subdivision" means a county, city, town, local district under this title, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

[~~(17)~~] (20) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, or a political subdivision.

[~~(18)~~] (21) "Public entity" means:

(a) the United States or an agency of the United States;

(b) the state or an agency of the state;

(c) a political subdivision of the state or an agency of a political subdivision of the state;

(d) another state or an agency of that state; or

(e) a political subdivision of another state or an agency of that political subdivision.

[~~(19)~~] (22) "Public transit district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 8, Public Transit District Act, including an entity that was created and operated as a public transit district under the law in effect before April 30, 2007.

[~~(20)~~] (23) "Revenue bond":

(a) means a bond payable from designated taxes or other revenues other than the local district's ad valorem property taxes; and

(b) does not include:

(i) an obligation constituting an indebtedness within the meaning of an applicable constitutional or statutory debt limit;

(ii) a tax and revenue anticipation bond; or

(iii) a special assessment bond.

(24) "Service applicant" means a person who requests that a local district provide a service that the local district is authorized to provide.

[~~(21)~~] (25) "Service area" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 9, Service Area Act, including an entity that was created and operated as a county service area or a regional service area under the law in effect before April 30, 2007.

[~~(22)~~] (26) "Short-term bond" means a bond that is required to be repaid during the fiscal year in which the bond is issued.

[~~(23)~~] (27) "Special assessment" means an assessment levied against property to pay all or a portion of the costs of making improvements that benefit the property.

[~~(24)~~] (28) "Special assessment bond" means a bond payable from special assessments.

[~~(25)~~] (29) "Specialized local district" means a local district that is a cemetery maintenance district, a drainage district, a fire protection district, an improvement district, an irrigation district, a metropolitan water district, a mosquito abatement district, a public transit district, a service area, or a water conservancy district.

[~~(26)~~] (30) "Taxable value" means the taxable value of property as computed from the most recent equalized assessment roll for county purposes.

[~~(27)~~] (31) "Tax and revenue anticipation bond" means a bond:

(a) issued in anticipation of the collection of taxes or other revenues or a combination of taxes and other revenues; and

(b) that matures within the same fiscal year as the fiscal year in which the bond is issued.

[~~(28)~~] (32) "Unincorporated" means not included within a municipality.

[~~(29)~~] (33) "Water conservancy district" means a local district that operates under and is subject to the provisions of this chapter and Chapter 2a, Part 10, Water Conservancy District Act, including an entity that was created and operated as a water conservancy district under the law in effect before April 30, 2007.

[~~(30)~~] (34) "Works" includes a dam, reservoir, well, canal, conduit, pipeline, drain, tunnel, power plant, and any facility, improvement, or property necessary or convenient for supplying or treating water for any beneficial use, and for otherwise accomplishing the purposes of a local district.

Section 2. Section 17B-1-119 is enacted to read:

17B-1-119. Service provided -- Requirements -- Reasonable diligence required for determination of whether improvements or warranty work meets standards -- Money damages prohibited.

(1) (a) A service applicant may request that a local district provide a service, subject to Subsection (1)(b).

(b) If a service applicant requests that a local district provide a service, the local district may, before committing to provide the service, require that the service applicant:

(i) (A) provide one or more improvements; and

(B) provide that an improvement meet any reasonable and roughly proportionate conditions and reasonable standards imposed by the local district; and

(ii) convey an improvement described in Subsection (1)(b)(i)(A) to the local district.

(2) If a local district requires a service applicant to convey an improvement to the local district, the local district may require that the service applicant provide an improvement assurance for the improvement.

(3) (a) If a local district requires an improvement assurance under Subsection (2), the local district may:

(i) require that the improvement assurance include an improvement assurance warranty for a period not to exceed:

(A) one year after the day on which the improvement is in service or one year after the day on which warranty work is accepted by the local district; or

(B) subject to Subsection (3)(b), two years after the day on which the improvement is in service or two years after the day on which the warranty work is accepted by the local district;

(ii) require a partial release of the improvement assurance, if applicable; and

(iii) establish objective inspection standards that an improvement must comply with before the local district, subject to Subsection (4), is required to accept the improvement.

(b) A local district may not request a warranty described in Subsection (3)(a)(i)(B) unless the local district:

(i) determines that a lesser warranty period is inadequate to protect public health, safety, and welfare; and

(ii) has substantial evidence of:

(A) the service applicant's prior poor performance;

(B) unstable soil conditions within the subdivision or development area; or

(C) extreme fluctuations in climate conditions that would render impracticable the discovery of substandard or defective performance within the period described in Subsection (3)(a)(i)(A).

(4) (a) If a service applicant notifies the local district that an improvement requested under Subsection (3)(b)(i)(A) is complete, the local district

shall, with reasonable diligence, determine whether the improvement meets the standards described in Subsection (3)(a)(iii).

(b) (i) A service applicant may request in writing that the local district accept or reject:

(A) subject to Subsection (4)(b)(ii), the installed improvement; or

(B) subject to Subsection (4)(b)(iii), performance of the warranty work.

(ii) The local district shall accept or reject an improvement:

(A) no later than 15 days after the day on which the service applicant submits a written request under Subsection (4)(b)(i); or

(B) within a reasonable period of time if an inspection of the installation is impeded by weather conditions.

(iii) The local district shall accept or reject performance of the warranty work:

(A) no later than 45 days after the day on which the service applicant submits a written request under Subsection (4)(b)(i); or

(B) within a reasonable period of time if an inspection of the warranty work is impeded by weather conditions.

(c) If a local district rejects an improvement under Subsection (4)(b)(ii) or the warranty work under Subsection (4)(b)(iii), the local district shall provide the service applicant a written statement specifying why the local district rejected the improvement or warranty work.

(5) (a) This section does not relieve a service applicant of any requirement or duty to comply with all applicable substantive rules or regulations.

(b) A local district's action or inaction under this section does not relieve a service applicant of any requirement or duty to comply with all applicable substantive rules or regulations.

(6) A person may not receive money damages for a claim arising under this section.

Section 3. Section 17B-1-120 is enacted to read:

17B-1-120. Exactions -- Exaction for water interest -- Requirement to offer to original owner property acquired by exaction.

(1) A local district may impose an exaction on a service received by an applicant, including, subject to Subsection (2), an exaction for a water interest if:

(a) the local district establishes that a legitimate local district interest makes the exaction essential; and

(b) the exaction is roughly proportionate, both in nature and extent, to the impact of the proposed service on the local district.

(2) (a) (i) A local district shall base an exaction for a water interest on the culinary water authority's established calculations of projected water interest requirements.

(ii) If requested by a service applicant, the culinary authority shall provide the basis for the culinary water authority's calculations described in Subsection (2)(a)(i).

(b) A local district may not impose an exaction for a water interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined in accordance with Section 73-1-4.

(3) (a) If a local district plans to dispose of surplus real property that was acquired under this section and has been owned by the local district for less than 15 years, the local district shall offer to reconvey the surplus real property, without receiving additional consideration, first to a person who granted the real property to the local district.

(b) The person described in Subsection (3)(a) shall, within 90 days after the day on which a local district makes an offer under Subsection (3)(a), accept or reject the offer.

(c) If a person rejects an offer under Subsection (3)(b), the local district may sell the real property.

Section 4. Section 17B-1-121 is enacted to read:

17B-1-121. Limit on fees -- Requirement to itemize and account for fees -- Appeals.

(1) A local district may not impose or collect:

(a) an application fee that exceeds the reasonable cost of processing the application; or

(b) an inspection or review fee that exceeds the reasonable cost of performing an inspection or review.

(2) (a) Upon request by a service applicant who is charged a fee or an owner of residential property upon which a fee is imposed, a local district shall provide a statement of each itemized fee and calculation method for each fee.

(b) If an applicant who is charged a fee or an owner of residential property upon which a fee is imposed submits a request for a statement of each itemized fee no later than 30 days after the day on which the applicant or owner pays the fee, the local district shall, no later than 10 days after the day on which the request is received, provide or commit to provide within a specific time:

(i) for each fee, any studies, reports, or methods relied upon by the local district to create the calculation method described in Subsection (2)(a);

(ii) an accounting of each fee paid;

(iii) how each fee will be distributed by the local district; and

(iv) information on filing a fee appeal through the process described in Subsection (2)(c).

(c) (i) A local district shall establish an impartial fee appeal process to determine whether a fee

reflects only the reasonable estimated cost of delivering the service for which the fee was paid.

(ii) A party to a fee appeal described in Subsection (2)(c)(i) may petition for judicial review of the local district's final decision.

(3) A local district may not impose on or collect from a public agency a fee associated with the public agency's development of the public agency's land other than:

(a) subject to Subsection (1), a hookup fee; or

(b) an impact fee, as defined in Section 11-36-102 and subject to Section 11-36-202, for a public facility listed in Subsection 11-36-102(13)(a), (b), (c), (d), (e), or (g).

Section 5. Section 17D-1-106 is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, [~~and~~] 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;

(b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, and 17B-1-313;

(c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

CHAPTER 206
S. B. 129
Passed March 7, 2011
Approved March 22, 2011
Effective May 10, 2011

LICENSING OF PHYSICIAN-EDUCATORS

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill modifies the Utah Medical Practice Act in relation to licensing of physician-educators.

Highlighted Provisions:

This bill:

- defines terms;
- provides for issuance of a temporary license for a foreign-educated physician who has been invited to serve as a faculty member at a Utah medical school;
- establishes requirements for a foreign-educated physician who has held a temporary license for at least five years to apply for a permanent license;
- authorizes the division to revoke a license described in this bill for a material misrepresentation or unlawful or unprofessional conduct; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-67-303, as last amended by Laws of Utah 2005, Chapter 94

58-67-502, as enacted by Laws of Utah 1996, Chapter 248

ENACTS:

58-67-302.7, Utah Code Annotated 1953

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

Section 1. Section 58-67-302.7 is enacted to read:

58-67-302.7. Licensing of physician-educators.

(1) As used in this section:

(a) "Foreign country" means a country other than the United States, its territories, or Canada.

(b) "Foreign medical school" means a medical school that is outside the United States, its territories, and Canada.

(2) Notwithstanding any provision of law to the contrary, an individual may receive a type I foreign teaching license if the individual:

(a) submits an application in a form prescribed by the division, which may include:

(i) submission by the applicant of information maintained in a practitioner data bank, as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) the applicant's curriculum vitae;

(b) is a graduate of a foreign medical school that is accepted for certification by the Educational Commission for Foreign Medical Graduates;

(c) is licensed in good standing in a foreign country, the United States, its territories, or Canada;

(d) does not have an investigation or action pending against the physician's healthcare license, does not have a healthcare license that was suspended or revoked, and has not surrendered a healthcare license in lieu of disciplinary action, unless:

(i) the license was subsequently reinstated in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant and full consideration by the division in collaboration with the board, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents resolution, and the division in collaboration with the board is satisfied that but for the mitigating circumstance, the license would be reinstated;

(e) submits documentation of legal status to work in the United States;

(f) meets at least three of the following qualifications:

(i) (A) published original results of clinical research, within 10 years before the day on which the application is submitted, in a medical journal listed in the Index Medicus or an equivalent scholarly publication; and

(B) submits the publication to the Board in English or in a foreign language with a verifiable, certified English translation;

(ii) held an appointment at a medical school approved by the LCME or at any medical school listed in the World Health Organization directory at the level of associate or full professor, or its equivalent, for at least five years;

(iii) (A) developed a treatment modality, surgical technique, or other verified original contribution to the field of medicine within 10 years before the day on which the application is submitted; and

(B) has the treatment modality, surgical technique, or other verified original contribution attested to by the dean of an LCME accredited school of medicine in Utah;

(iv) actively practiced medicine cumulatively for 10 years; or

(v) is board certified in good standing of a board of the American Board of Medical Specialities or equivalent specialty board;

(g) is of good moral character;

(h) is able to read, write, speak, understand, and be understood in the English language and demonstrates proficiency to the satisfaction of the division in collaboration with the board, if requested;

(i) is invited by an LCME accredited medical school in Utah to serve as a full-time member of the medical school's academic faculty, as evidenced by written certification from:

(i) the dean of the medical school, stating that the applicant has been appointed to a full-time faculty position, that because the applicant has unique expertise in a specific field of medicine the medical school considers the applicant to be a valuable member of the faculty, and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the state; and

(ii) the head of the department to which the applicant is to be appointed, stating that the applicant will be under the direction of the head of the department and will be permitted to practice medicine only as a necessary part of the applicant's duties, providing detailed evidence of the applicant's qualifications and competence, including the nature and location of the applicant's proposed responsibilities, reasons for any limitations of the applicant's practice responsibilities, and the degree of supervision, if any, under which the applicant will function;

(j) pays a licensing fee set by the division under Section 63J-1-504; and

(k) has practiced medicine for at least 10 years as an attending physician.

(3) Notwithstanding any provision of law to the contrary, an individual may receive a type II foreign teaching license if the individual:

(a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);

(b) has delivered clinical care to patients cumulatively for five years after graduation from medical school; and

(c) (i) will be completing a clinical fellowship while employed at the medical school described in Subsection (2)(i); or

(ii) has already completed a medical residency accredited by the Royal College of Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a comparable accreditation organization as determined by the division in collaboration with the board.

(4) After an initial term of one year, a type I license may be renewed for periods of two years if the licensee continues to satisfy the requirements described in Subsection (2) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(5) A type II license may be renewed on an annual basis, up to four times, if the licensee continues to satisfy the requirements described in Subsection (3) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(6) A license issued under this section:

(a) authorizes the licensee to practice medicine:

(i) within the scope of the licensee's employment at the medical school described in Subsection (2)(i) and the licensee's academic position; and

(ii) at a hospital or clinic affiliated with the medical school described in Subsection (2)(i) for the purpose of teaching, clinical care, or pursuing research;

(b) shall list the limitations described in Subsection (6)(a); and

(c) shall expire on the earlier of:

(i) one year after the day on which the type I or type II license is initially issued, unless the license is renewed;

(ii) for a type I license, two years after the day on which the license is renewed;

(iii) for a type II license, one year after the day on which the license is renewed; or

(iv) the day on which employment at the medical school described in Subsection (2)(i) ends.

(7) A person who holds a type I license for five consecutive years may apply for licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies the requirements described in Subsection (8). If the person fails to obtain licensure as a physician and surgeon in this state, the person may apply for a renewal of the type I license under Subsection (2).

(8) An individual who holds a type I or type II license for five consecutive years is eligible for licensure as a physician and surgeon in this state if the individual:

(a) worked an average of at least 40 hours per month at the level of an attending physician during the time the individual held the type I or type II license;

(b) holds the rank of associate professor or higher at the medical school described in Subsection (2)(i);

(c) obtains certification from the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

(d) spent a cumulative 20 hours per year while holding a type I or type II license:

(i) teaching or lecturing to medical students or house staff;

(ii) participating in educational department meetings or conferences that are not certified to meet the continuing medical education license renewal requirement; or

(iii) attending continuing medical education classes in addition to the requirements for continuing education described in Subsections (4) and (5);

(e) obtains a passing score on the final step of the licensing examination sequence required by division rule made in collaboration with the board; and

(f) satisfies the requirements described in Subsections 58-67-302(1)(a) through (c) and (h) through (k).

(9) If a person who holds a type II license fails to obtain licensure as a physician and surgeon in this state after applying under the procedures described in Subsection (8), the person may not:

(a) reapply for or renew a type II license; or

(b) apply for a type I license.

(10) The division or the board may require an applicant for licensure under this section to meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.

(11) The division in collaboration with the board may withdraw a license under this section at any time for material misrepresentation or unlawful or unprofessional conduct.

Section 2. Section 58-67-303 is amended to read:

58-67-303. Term of license -- Expiration -- Renewal.

(1) (a) [~~The~~] Except as provided in Section 58-67-302.7, the division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with:

(a) continuing education renewal requirements; and

(b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-67-304(1)(b) and (c).

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 3. Section 58-67-502 is amended to read:

58-67-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501, using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7.

CHAPTER 207
S. B. 130
Passed February 28, 2011
Approved March 22, 2011
Effective May 10, 2011

SURPLUS PROPERTY AMENDMENTS

Chief Sponsor: Stuart C. Reid
House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by moving the state surplus property program to the Division of Purchasing and General Services.

Highlighted Provisions:

This bill:

- defines terms;
- moves the state surplus property program from the Division of Fleet Operations of the Department of Administrative Services to the Division of Purchasing and General Services in the same department; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-1-21, as last amended by Laws of Utah 2008, Chapter 382
63A-2-103, as last amended by Laws of Utah 2009, Chapter 183

ENACTS:

63A-2-101.5, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63A-2-401, (Renumbered from 63A-9-801, as last amended by Laws of Utah 2008, Chapters 3 and 382)
63A-2-402, (Renumbered from 63A-9-802, as renumbered and amended by Laws of Utah 1997, Chapter 252)
63A-2-403, (Renumbered from 63A-9-803, as renumbered and amended by Laws of Utah 1997, Chapter 252)
63A-2-404, (Renumbered from 63A-9-805, as last amended by Laws of Utah 2001, Chapter 9)
63A-2-405, (Renumbered from 63A-9-807, as renumbered and amended by Laws of Utah 1997, Chapter 252)
63A-2-406, (Renumbered from 63A-9-808, as last amended by Laws of Utah 2008, Chapter 382)
63A-2-407, (Renumbered from 63A-9-808.1, as last amended by Laws of Utah 2005, Chapters 60 and 61)
63A-2-408, (Renumbered from 63A-9-809, as renumbered and amended by Laws of Utah 1997, Chapter 252)
63A-2-409, (Renumbered from 63A-9-806, as renumbered and amended by Laws of Utah 1997, Chapter 252)

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

Section 1. Section 26-1-21 is amended to read:

26-1-21. Disposal of property by department.

(1) The department may dispose of any personal property owned by it or any of the entities created under Section 26-1-13, in the manner provided in Title 63A, Chapter [~~9~~] 2, Part [~~8~~] 4, Surplus Property Service.

(2) The department may dispose of any real property owned by it or any of the entities created under Section 26-1-13, in the manner provided in Title 65A, Chapter 4, Acquisition and Disposition of Land by State Agencies.

Section 2. Section 63A-2-101.5 is enacted to read:

63A-2-101.5. Definitions.

As used in this chapter:

(1) "Division" means the Division of Purchasing and General Services created under Section 63A-2-101.

(2) "Information technology equipment" means equipment that is designed to electronically manipulate, store, or transfer a form of data.

(3) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(4) "Judicial district" means a geographic district established by Section 78A-1-102.

(5) "Person with a disability" means a person with a severe, chronic disability that:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is likely to continue indefinitely.

(6) "Personal handheld electronic device":

(a) means an electronic device that is designed for handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and

(b) includes a mobile phone, pocket personal computer, personal digital assistant, or similar device.

(7) "Property act" means the Federal Property and Administrative Services Act of 1949, 40 U.S.C. Sec. 549.

(8) (a) "Surplus property" means property that an agency:

(i) intends for disposal; and

(ii) has acquired by purchase, seizure, or donation.

(b) "Surplus property" does not include:

(i) real property; or

(ii) an aluminum can or an item made primarily of paper, plastic, or card board that is:

(A) discarded; and

(B) recyclable.

(9) "Transfer" means transfer of surplus property without cash consideration except for a fee described in Subsection 63A-2-401(3)(c).

Section 3. Section 63A-2-103 is amended to read:

63A-2-103. General services provided -- Subscription by state departments, state agencies, and certain local governmental entities -- Fee schedule.

(1) (a) The director of the division [~~of Purchasing and General Services~~] shall operate, manage, and maintain:

(i) a central mailing service; [~~and~~]

(ii) an electronic central store system for procuring goods and services[~~.~~]; and

(iii) the state surplus property program in accordance with Part 4, Surplus Property Services.

(b) The director may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) Each state department and agency shall subscribe to all of the services described in [~~Subsection~~] Subsections (1)(a)(i) and (ii), unless the director delegates the director's authority to a department or agency under Section 63A-2-104.

(b) An institution of higher education, school district, or political subdivision of the state may subscribe to one or more of the services described in [~~Subsection~~] Subsections (1)(a)(i) and (ii).

(3) The director shall:

(a) prescribe a schedule of fees to be charged for all services provided by the division to any department or agency after the director:

(i) submits the proposed rate, fees, or other amounts for services provided by the division's internal service fund to the Rate Committee established in Section 63A-1-114; and

(ii) obtains the approval of the Legislature, as required by Sections 63J-1-410 and 63J-1-504;

(b) when practicable, ensure that the fees are approximately equal to the cost of providing the services; and

(c) periodically conduct a market analysis [~~by July 1, 2005, and periodically thereafter~~] of fees, which analysis shall include comparison of the division's rates with the fees of other public or private sector providers where comparable services and rates are reasonably available.

Section 4. Section 63A-2-401, which is renumbered from Section 63A-9-801 is renumbered and amended to read:

Part 4. Surplus Property Service

[~~63A-9-801~~]. 63A-2-401. State surplus property program -- Definitions -- Administration.

(1) As used in this [~~section: (a)~~] part, "agency" means:

[~~(i)~~] (a) the Utah Departments of Administrative Services, Agriculture[~~,~~] and Food, Alcoholic Beverage Control, Commerce, Community and Culture, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, Technology Services, and Transportation and the Labor Commission;

[~~(ii)~~] (b) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime Victim Reparations, Rehabilitation, and Treasurer;

[~~(iii)~~] (c) the Public Service Commission and State Tax Commission;

[~~(iv)~~] (d) the State Boards of Education, Pardons and Parole, and Regents;

[~~(v)~~] (e) the Career Service Review [~~Board~~] Office;

[~~(vi)~~] (f) other state agencies designated by the governor;

[~~(vii)~~] (g) the legislative branch, the judicial branch, and the State Board of Regents; and

[~~(viii)~~] (h) an institution of higher education, its president, and its board of trustees for purposes of Section [~~63A-9-802~~] 63A-2-402.

[~~(b) "Division" means the Division of Fleet Operations.~~]

[~~(c) "Information technology equipment" means any equipment that is designed to electronically manipulate, store, or transfer any form of data.~~]

[~~(d) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.~~]

[~~(e) "Judicial district" means the geographic districts established by Section 78A-1-102.~~]

[~~(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.~~]

[~~(ii) "Surplus property" does not mean real property.~~]

[~~(g) "Transfer" means transfer of surplus property without cash consideration.~~]

(2) (a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) [~~Those~~] The rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling;

(viii) procedures governing the timing and location of public sales of inventory property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) The division shall report all transfers of information technology equipment by state agencies to public schools to the Utah Technology Commission and to the Legislative Interim Education Committee at the end of each fiscal year.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(c) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less [~~an amount established by the division by rule~~] a fee approved in accordance with Sections 63A-1-114 and 63J-1-410, to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this [~~chapter~~] part by explicit reference to this [~~chapter~~] part, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 5. Section 63A-2-402, which is renumbered from Section 63A-9-802 is renumbered and amended to read:

[~~63A-9-802~~]. 63A-2-402. State surplus property program -- Participation by institutions of higher education.

The Board of Regents shall:

(1) implement a policy requiring each institution of higher education to submit to the division a listing of surplus property available for sale outside the institution, at least 15 days prior to the intended sale date;

(2) supervise and assist compliance by the institutions of higher education with the requirement of this part; and

(3) encourage institutions of higher education to acquire federal surplus property from the division to reduce expenditures.

Section 6. Section 63A-2-403, which is renumbered from Section 63A-9-803 is renumbered and amended to read:

[~~63A-9-803~~]. 63A-2-403. Methods of disposition of surplus authorized.

The division may dispose of state surplus property by public auction, sealed bids, or by other means established by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 7. Section 63A-2-404, which is renumbered from Section 63A-9-805 is renumbered and amended to read:

[~~63A-9-805~~]. 63A-2-404. Acquisition of federal surplus property -- Powers and duties -- Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of information -- Reports.

[~~(1) As used in this section:~~]

[~~(a) "Property" includes equipment, materials, books, and other supplies.~~]

[~~(b) "Property act" means Section 203(j) of the Federal Property and Administrative Services Act of 1949.~~]

[~~(2)~~] (1) The division may:

(a) acquire from the United States [~~of America~~] under and in conformance with the property act any property under the control of any department or agency of the United States that is usable and necessary for any purposes authorized by federal law;

(b) warehouse that property if it is not real property; and

(c) distribute that property within [~~Utah~~] this state to:

(i) tax-supported medical institutions, hospitals, clinics, and health centers;

(ii) school systems, schools, colleges, and universities;

(iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954;

(iv) civil defense organizations;

(v) political subdivisions; and

(vi) any other types of institutions or activities that are eligible to acquire the property under federal law.

[~~(3)~~] (2) The division may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;

(b) investigate the applications;

(c) obtain opinions about those applications from the appropriate health or educational authorities of [~~Utah~~] this state;

(d) make recommendations about the need of the applicant for the property, the merits of the applicant's proposed use of the property, and the suitability of the property for those purposes; and

(e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.

[~~(4)~~] (3) The division may appoint advisory boards or committees.

[~~(5)~~] (4) If required by law or regulation of the United States in connection with the disposal of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the division from the United States, the division may:

(a) make certifications, take action, and make expenditures;

(b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;

(c) require reports; and

(d) make investigations.

[~~(6)~~] (5) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:

(a) locate both real and personal property available for acquisition from the United States;

(b) ascertain the terms and conditions under which that property may be obtained;

(c) receive requests from those institutions, organizations, and agencies and transmit to them all available information in reference to that property; and

(d) aid and assist those institutions, organizations, and agencies in every way possible in those acquisitions or transactions.

[~~(7)~~] (6) The division shall:

(a) cooperate with the departments or agencies of the United States;

(b) file a state plan of operation;

(c) operate according to that plan;

(d) take the actions necessary to meet the minimum standards prescribed by the property act;

(e) make any reports required by the United States or any of its departments or agencies; and

(f) comply with the laws of the United States and the regulations of any of the departments or agencies of the United States governing the allocation of, transfer of, use of, or accounting for any property donated to the state.

Section 8. Section 63A-2-405, which is renumbered from Section 63A-9-807 is renumbered and amended to read:

[~~63A-9-807~~]. 63A-2-405. Charges and fees assessed for surplus property.

If approved in accordance with Sections 63A-1-114 and 63J-1-410, the division:

(1) [~~The division~~] may assess charges and fees for the acquisition, warehousing, distribution, or transfer of any property of the United States for educational, public health, or civil defense purposes, including research, only if those charges and fees are reasonably related to the division's care and handling costs of acquiring, receipting, warehousing, distributing, or transferring the property[~~.~~];

(2) [~~The division~~] may reduce or eliminate charges on property that is found not to be usable for the purpose for which it was procured[~~.~~]; and

(3) [~~The division~~] shall limit the charges and fees assessed against real property to the reasonable administrative costs that the division incurred in effecting transfer.

Section 9. Section 63A-2-406, which is renumbered from Section 63A-9-808 is renumbered and amended to read:

[~~63A-9-808~~]. 63A-2-406. Rulemaking on giving priority to state and local agencies in purchasing surplus property -- Rulemaking on the sale or use of a personal handheld electronic device.

[~~(1) As used in this section, "personal handheld electronic device":~~]

[~~(a) means an electronic device that is designed for handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and~~]

[~~(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.~~]

[~~(2)~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

[~~(a)~~] (1) giving state and local agencies priority to purchase surplus property for a 30-day period except for personal handheld electronic devices under Subsection (2)[~~(b)~~]; and

[~~(b)~~] (2) allowing the sale of a personal handheld electronic device to a user who:

[~~(i)~~] (a) is provided the device as part of the user's employment; and

[~~(ii)~~] (b) subsequently makes a change in employment status including, departure, retirement, or transfer to another agency within state government.

Section 10. Section 63A-2-407, which is renumbered from Section 63A-9-808.1 is renumbered and amended to read:

[~~63A-9-808.1~~]. 63A-2-407. Transfer of information technology equipment for persons with a disability.

[~~(1) As used in this section, "a person with a disability" means a person with a severe, chronic disability that:~~]

[~~(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and~~]

[~~(b) is likely to continue indefinitely.~~]

[~~(2)~~] (1) The division may transfer information technology equipment, or authorize the transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use by a person with a disability.

[~~(3)~~] (2) Interagency transfers and sales of surplus property to state and local agencies within the 30-day period under Section [~~63A-9-808~~] 63A-2-406 shall have priority over transfers under Subsection [~~(2)~~] (1).

[~~(4)~~] (3) The division shall annually report to the Division of Services for People With Disabilities the:

(a) names of the nonprofit entities receiving transfers under Subsection [~~(2)~~] (1); and

(b) types and amounts of equipment received.

Section 11. Section 63A-2-408, which is renumbered from Section 63A-9-809 is renumbered and amended to read:

[~~63A-9-809~~]. 63A-2-408. Authority of state or local subdivision to receive property -- Revocation of authority of officer.

(1) Notwithstanding any other provision of law, the governing board or the executive director of any state department, instrumentality, or agency or the legislative body of any city, county, school district, or other political subdivision may by order or resolution give any officer or employee the authority to:

(a) secure the transfer to it of surplus property through the division under the [~~provisions of Section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended~~] the property act; and

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of those transfers.

(2) The authority conferred upon any officer or employee by an order or resolution remains in effect until:

(a) the order or resolution is revoked; and

(b) the division has received written notice of the revocation.

Section 12. Section 63A-2-409, which is renumbered from Section 63A-9-806 is renumbered and amended to read:

[~~63A-9-806~~]. 63A-2-409. Bonds.

The executive director of the Department of Administrative Services may bond any person employed by the division who handles money, signs checks, or receives or distributes surplus property.

CHAPTER 208
S. B. 143
Passed February 23, 2011
Approved March 22, 2011
Effective May 10, 2011

JUDICIARY AMENDMENTS

Chief Sponsor: Lyle W. Hillyard
House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill makes changes throughout the code regarding the judiciary and courts.

Highlighted Provisions:

This bill:

- permits a person to be a candidate for more than one justice court judge office;
- requires an appointee or a candidate to more than one justice court office to:
  - pay a filing fee for each office; and
  - identify on the declaration of candidacy all of the courts included in the general election;
- allows a declaration of candidacy in one county to be valid in any other county in which the candidate may be appointed or elected;
- requires the ballot title to include the name of a court created by interlocal agreement;
- removes the requirement that all registered voters in a county vote in the retention election of a county justice court judge;
- removes the requirement that the governing bodies of a county and a municipality within that county both concur when a justice court judge is permitted to hold office as both a county and a municipal justice court judge;
- modifies a provision regarding child protective orders to comply with Rule 4 of the Utah Rules of Civil Procedure;
- allows any court, without a jury, to determine questions of fact and law and any constitutional issue presented in the pleadings;
- limits the scope of those who may petition the court for a modification or revocation of the court's child custody order to the child's parent or guardian;
- limits the scope of those who may petition the court for a new hearing on the ground that new evidence has been discovered;
- requires that disposition orders include notice that the right to appeal must be taken within 15 days from the entry of the order, decree, or judgement;
- authorizes the court to include in a minor's disposition order, an order to a minor's parent or guardian to pay restitution as authorized by law;
- requires the minimum payment of restitution to be at least $5, unless the payment is the final payment and less than $5 is owed;
- removes the authorization for a justice court judge to order administrative traffic checkpoints and issue search warrants; and
- allows the certificate of admission fee charged to new attorneys to be nonlapsing.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-9-201, as last amended by Laws of Utah 2010, Chapter 12
20A-12-201, as last amended by Laws of Utah 2008, Chapters 93 and 225
63G-4-402, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382
63J-1-602.5, as enacted by Laws of Utah 2010, Chapter 265
77-38a-404, as last amended by Laws of Utah 2008, Chapter 3
78A-2-220, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1103, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1108, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1109, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1113, as last amended by Laws of Utah 2009, Chapter 331
78A-7-105, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-7-204, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-7-205, as last amended by Laws of Utah 2009, Chapter 146

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

Section 1. Section 20A-9-201 is amended to read:

20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of more than one political party prohibited with exceptions -- General filing and form requirements -- Affidavit of impecuniosity.

(1) Before filing a declaration of candidacy for election to any office, a person shall:

(a) be a United States citizen; and

(b) meet the legal requirements of that office.

(2) (a) Except as provided in Subsection (2)(b), a person may not:

(i) file a declaration of candidacy for, or be a candidate for, more than one office in Utah during any election year; or

(ii) appear on the ballot as the candidate of more than one political party.

(b) (i) A person may file a declaration of candidacy for, or be a candidate for, President or Vice President of the United States and another office, if the person resigns the person's candidacy for the other office after the person is officially nominated for President or Vice President of the United States.

(ii) A person may file a declaration of candidacy for, or be a candidate for, more than one justice court judge office.

(3) (a) (i) Except for presidential candidates, before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether or not the candidate meets those requirements.

(ii) Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the county in which he is seeking office; and

(D) a current resident of the county in which he is seeking office and either has been a resident of that county for at least one year or was appointed and is currently serving as county attorney and became a resident of the county within 30 days after appointment to the office.

(iii) Before accepting a declaration of candidacy for the office of district attorney, the county clerk shall ensure that, as of the date of the election, the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the prosecution district in which he is seeking office; and

(D) a current resident of the prosecution district in which he is seeking office and either will have been a resident of that prosecution district for at least one year as of the date of the election or was appointed and is currently serving as district attorney and became a resident of the prosecution district within 30 days after receiving appointment to the office.

(iv) Before accepting a declaration of candidacy for the office of county sheriff, the county clerk shall ensure that the person filing the declaration of candidacy:

(A) as of the date of filing:

(I) is a United States citizen;

(II) is a registered voter in the county in which the person seeks office;

(III) (Aa) has successfully met the standards and training requirements established for law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(Bb) has passed a certification examination as provided in Section 53-6-206; and

(IV) is qualified to be certified as a law enforcement officer, as defined in Section 53-13-103; and

(B) as of the date of the election, shall have been a resident of the county in which the person seeks office for at least one year.

(v) Before accepting a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state legislator, or State Board of Education member, the filing officer shall ensure:

(A) that the person filing the declaration of candidacy also files the financial disclosure required by Section 20A-11-1603; and

(B) if the filing officer is not the lieutenant governor, that the financial disclosure is provided to the lieutenant governor according to the procedures and requirements of Section 20A-11-1603.

(b) If the prospective candidate states that he does not meet the qualification requirements for the office, the filing officer may not accept the prospective candidate's declaration of candidacy.

(c) If the candidate meets the requirements of Subsection (3)(a) and states that he meets the requirements of candidacy, the filing officer shall:

(i) inform the candidate that:

(A) the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(B) the candidate may be required to comply with state or local campaign finance disclosure laws; and

(C) the candidate is required to file a financial statement before the candidate's political convention under:

(I) Section 20A-11-204 for a candidate for constitutional office;

(II) Section 20A-11-303 for a candidate for the Legislature; or

(III) local campaign finance disclosure laws, if applicable;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer;

(v) accept the candidate's declaration of candidacy; and

(vi) if the candidate has filed for a partisan office, provide a certified copy of the declaration of candidacy to the chair of the county or state political party of which the candidate is a member.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) Except for presidential candidates, the form of the declaration of candidacy shall be substantially as follows:

"State of Utah, County of ____

I, _____, declare my intention of becoming a candidate for the office of ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of ____, Utah, Zip Code ____ Phone No. ____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

Subscribed and sworn before me this _____(month\day\year).

Notary Public (or other officer qualified to administer oath.)"

(5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy is:

(i) $25 for candidates for the local school district board; and

(ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person holding the office, but not less than $5, for all other federal, state, and county offices.

(b) Except for presidential candidates, the filing officer shall refund the filing fee to any candidate:

(i) who is disqualified; or

(ii) who the filing officer determines has filed improperly.

(c) (i) The county clerk shall immediately pay to the county treasurer all fees received from candidates.

(ii) The lieutenant governor shall:

(A) apportion to and pay to the county treasurers of the various counties all fees received for filing of nomination certificates or acceptances; and

(B) ensure that each county receives that proportion of the total amount paid to the lieutenant governor from the congressional district that the total vote of that county for all candidates for representative in Congress bears to the total vote of all counties within the congressional district for all candidates for representative in Congress.

(d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer, a financial statement filed at the time the affidavit is submitted.

(ii) A person who is able to pay the filing fee may not claim impecuniosity.

(iii) (A) False statements made on an affidavit of impecuniosity or a financial statement filed under this section shall be subject to the criminal penalties provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be considered an offense under this title for the purposes of assessing the penalties provided in Subsection 20A-1-609(2).

(iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in substantially the following form:

"Affidavit of Impecuniosity

Individual Name _____

Address_____

Phone Number _____

I,_____(name), do solemnly [swear] [affirm], under penalty of law for false statements, that, owing to my poverty, I am unable to pay the filing fee required by law.

Date_____

Signature_____

AffiantSubscribed and sworn to before me on _____ (month\day\year)

_____(signature)

Name and Title of Officer Authorized to Administer Oath _____"

(v) The filing officer shall provide to a person who requests an affidavit of impecuniosity a statement printed in substantially the following form, which may be included on the affidavit of impecuniosity:

"Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a candidate who is found guilty of filing a false statement, in addition to being subject to criminal penalties, will be removed from the ballot."

(vi) The filing officer may request that a person who makes a claim of impecuniosity under this

Subsection (5)(d) file a financial statement on a form prepared by the election official.

(6) Any person who fails to file a declaration of candidacy or certificate of nomination within the time provided in this chapter is ineligible for nomination to office.

(7) A declaration of candidacy filed under this section may not be amended or modified after the final date established for filing a declaration of candidacy.

Section 2. Section 20A-12-201 is amended to read:

20A-12-201. Judicial appointees -- Retention elections.

(1) (a) Each judicial appointee to a court is subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed.

(b) After the first retention election:

(i) each Supreme Court justice shall be on the regular general election ballot for an unopposed retention election every tenth year; and

(ii) each judge of other courts shall be on the regular general election ballot for an unopposed retention election every sixth year.

(2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy as if a candidate for multi-county office in accordance with Section 20A-9-202; and

(ii) pay a filing fee of $50.

(b) (i) Each justice court judge who wishes to retain office shall, in the year the justice court judge is subject to a retention election:

[~~(i)~~] (A) file a declaration of candidacy as if a candidate for county office in accordance with Section 20A-9-202; and

[~~(ii)~~] (B) pay a filing fee of $25 for each judicial office.

(ii) If a justice court judge is appointed or elected to more than one judicial office, the declaration of candidacy shall identify all of the courts included in the same general election.

(iii) If a justice court judge is appointed or elected to more than one judicial office, filing a declaration of candidacy in one county in which one of those courts is located is valid for the courts in any other county.

(3) (a) The lieutenant governor shall, no later than September 8 of each regular general election year:

(i) transmit a certified list containing the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

(ii) transmit a certified list containing the names of judges of other courts declaring their candidacy to the county clerk of each county in the geographic division in which the judge filing the declaration holds office.

(b) Each county clerk shall place the names of justices and judges standing for retention election in the nonpartisan section of the ballot.

(4) (a) At the general election, the ballots shall contain, as to each justice or judge of any court to be voted on in the county, the following question:

"Shall _____(name of justice or judge) be retained in the office of _____?" (name of office, such as "Justice of the Supreme Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District"; " Justice Court Judge of (name of county) County or (name of municipality)")

Yes ()

No ()."

(b) If a justice court exists by means of an interlocal agreement under Section 78A-7-102, the ballot question for the judge shall include the name of that court.

(5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge is retained for the term of office provided by law.

(b) If the justice or judge does not receive more yes votes than no votes, the justice or judge is not retained, and a vacancy exists in the office on the first Monday in January after the regular general election.

(6) A justice or judge not retained is ineligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

Section 3. Section 63G-4-402 is amended to read:

63G-4-402. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and

(iii) substantiated findings of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the

petitioner resides or maintains the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The [~~district~~] court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 4. Section 63J-1-602.5 is amended to read:

63J-1-602.5. List of nonlapsing funds and accounts -- Title 64 and thereafter.

(1) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).

(2) The Sovereign Lands Management account created in Section 65A-5-1.

(3) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

(4) The Department of Human Resource Management user training program, as provided in Section 67-19-6.

(5) Funds for the University of Utah Poison Control Center program, as provided in Section 69-2-5.5.

(6) Appropriations to the Transportation Corridor Preservation Revolving Loan Fund, as provided in Section 72-2-117.

(7) Appropriations to the Local Transportation Corridor Preservation Fund, as provided in Section 72-2-117.5.

(8) Appropriations to the Tollway Special Revenue Fund, as provided in Section 72-2-120.

(9) Appropriations to the Aeronautics Construction Revolving Loan Fund, as provided in Section 72-2-122.

(10) The Traffic Noise Abatement Program created in Section 72-6-112.

(11) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.

(12) Certain monies appropriated to increase the carrying capacity of the Jordan River that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1.

(13) Certain funds in the Water Development and Flood Mitigation Reserve Account, as provided in Section 73-10e-1.

(14) Certain monies appropriated from the Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

(15) The Lake Powell Pipeline Project Operation and Maintenance Fund created in Section 73-28-404.

(16) Certain funds appropriated for compensation for special prosecutors, as provided in Section 77-10a-19.

(17) The Indigent Aggravated Murder Defense Trust Fund created in Section 77-32-601.

(18) The Indigent Felony Defense Trust Fund created in Section 77-32-701.

(19) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

(20) A state rehabilitative employment program, as provided in Section 78A-6-210.

(21) The account for the Utah Geological Survey, as provided in Section 79-3-401.

(22) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, Jordan River State Park, and Green River State Park, as provided under Section 79-4-403.

(23) Certain funds received by the Division of Parks and Recreation from the sale or disposal of buffalo, as provided under Section 79-4-1001.

(24) The Bonneville Shoreline Trail Program created under Section 79-5-503.

(25) Fees for certificate of admission created under Section 78A-9-102.

Section 5. Section 77-38a-404 is amended to read:

77-38a-404. Priority.

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60

days of receipt from the defendant by the court or department provided:

(a) [~~provided~~] the victim has complied with Subsection 77-38a-203(1)(b); [~~and~~]

(b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received[~~.~~]; and

(c) the payment to the victim is at least $5, unless the payment is the final payment.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

(a) the crime victim;

(b) the Office of Crime Victim Reparations;

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;

(d) the person, entity, or governmental agency that has offered and paid a reward under Section 76-3-201.1 or 78A-6-117;

(e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department will be applied:

(a) first, to victim restitution, except the current and past due amount of $30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

Section 6. Section 78A-2-220 is amended to read:

78A-2-220. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

(a) commit a person to incarceration prior to trial;

(b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;

(c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;

(d) conduct an initial appearance in a felony;

(e) conduct arraignments;

(f) conduct a preliminary examination to determine probable cause;

(g) appoint attorneys and order recoupment of attorney fees;

(h) order the preparation of presentence investigations and reports;

(i) issue temporary orders as provided by rule of the Judicial Council; and

(j) perform any other act or function authorized by statute.

(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council; and

(b) a judge of the justice court may not set bail in a capital felony nor deny bail in any case[~~; and~~].

[~~(c) a judge of the justice court may authorize administrative traffic checkpoints under Section 77-23-104 and issue search warrants only within the judicial district.~~]

Section 7. Section 78A-6-1103 is amended to read:

78A-6-1103. Modification or termination of custody order or decree -- Grounds -- Procedure.

(1) A parent[~~,~~] or guardian[~~, or next friend~~] of [~~a~~] any child whose legal custody has been transferred by the court to an individual, agency, or institution, except a secure youth corrections facility, may petition the court for restoration of custody or other modification or revocation of the court's order, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest of the child or the public.

(2) The court shall make a preliminary investigation. If the court finds that the alleged change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the court finds that a further examination of the facts is needed, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or terminating the decree.

(3) A petition by a parent may not be filed under this section after the parent's parental rights have been terminated in accordance with Part 5, Termination of Parental Rights Act.

(4) An individual, agency, or institution vested with legal custody of a child may petition the court for a modification of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court shall proceed upon the petition in accordance with Subsections (1) and (2).

Section 8. Section 78A-6-1108 is amended to read:

78A-6-1108. New hearings authorized -- Grounds and procedure.

(1) A parent, guardian, or custodian[~~, or next friend~~] of any child adjudicated under this chapter, or any minor who is at least 18 years old, or adult affected by a decree in a proceeding under this chapter, may at any time petition the court for a new hearing on the ground that new evidence which was not known and could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered.

(2) If it appears to the court that there is new evidence which might affect its decree, it shall order a new hearing, enter a decree, and make any disposition of the case warranted by all the facts and circumstances and the best interests of the minor.

(3) This section does not apply to a minor's case handled under the provisions of Section 78A-6-702.

Section 9. Section 78A-6-1109 is amended to read:

78A-6-1109. Appeals.

(1) An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court.

(2) Appeals of right from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, shall be taken within 15 days from entry of the order, decree, or judgment appealed from. In addition, the notice of appeal must be signed by appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

[~~(3) If the parties are present in the courtroom, the court shall inform them of:~~]

(3) The disposition order shall include the following information:

(a) notice that the right to appeal is time sensitive and must be taken within 15 days from entry of the order, decree, or judgement appealed from;

[~~(a)~~] (b) [~~their~~] the right to appeal within the specified time limits;

[~~(b)~~] (c) the need for [~~their~~] the signature of the parties on a notice of appeal in appeals from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

[~~(c)~~] (d) the need for parties to maintain regular contact with their counsel and to keep all other parties and the appellate court informed of their whereabouts.

(4) If the parties are not present in the courtroom, the court shall mail a written statement containing the information provided in Subsection (3) to the parties at their last known address.

(5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings that, if an appeal is filed, they must represent their clients throughout the appellate process unless relieved of that obligation by the juvenile court upon a showing of extraordinary circumstances.

(b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it must be included in the petition on appeal.

(6) During the pendency of an appeal from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, parties shall maintain regular contact with their counsel, if any, and keep all other parties and the appellate court informed of their whereabouts.

(7) In all other appeals of right, the appeal shall be taken within 30 days from the entry of the order, decree, or judgment appealed from and the notice of appeal must be signed by appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all appeals under this chapter.

(8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

(9) The name of the minor may not appear on the record on appeal.

Section 10. Section 78A-6-1113 is amended to read:

78A-6-1113. Property damage caused by a minor -- Liability of parent or legal guardian -- Criminal conviction or adjudication for criminal mischief or criminal trespass not a prerequisite for civil action under chapter -- When parent or guardian not liable.

(1) The parent or legal guardian having legal custody of the minor is liable for damages sustained to property not to exceed $2,000 when:

(a) the minor intentionally damages, defaces, destroys, or takes the property of another;

(b) the minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train,

railway car, or caboose, whether moving or standing; or

(c) the minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

(2) The parent or legal guardian having legal custody of the minor is liable for damages sustained to property not to exceed $5,000 when the minor commits an offense under Section (1):

(a) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(b) to gain recognition, acceptance, membership, or increased status with a criminal street gang.

(3) The court may make an order for the restitution authorized in this section to be paid by the minor's parent or guardian as part of the minor's disposition order.

[~~(3)~~] (4) As used in this section, property damage described under Subsection (1)(a) or (c), or Subsection (2), includes graffiti, as defined in Section 76-6-107.

[~~(4)~~] (5) A court may waive part or all of the liability for damages under this section by the parent or legal guardian if the offender is adjudicated in the juvenile court under Section 78A-6-117 only upon stating on the record that the court finds:

(a) good cause; or

(b) the parent or legal guardian:

(i) made a reasonable effort to restrain the wrongful conduct; and

(ii) reported the conduct to the property owner involved or the law enforcement agency having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

[~~(5)~~] (6) A report is not required under Subsection (4)(b) from a parent or legal guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the property owner involved.

[~~(6)~~] (7) A conviction for criminal mischief under Section 76-6-106, criminal trespass under Section 76-6-206, or an adjudication under Section 78A-6-117 is not a condition precedent to a civil action authorized under Subsection (1) or (2).

[~~(7)~~] (8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or guardian made a reasonable effort to supervise and direct their minor child, or, in the event the parent or guardian knew in advance of the possible taking, injury, or destruction by their minor child, made a reasonable effort to restrain the child.

Section 11. Section 78A-7-105 is amended to read:

78A-7-105. Territorial jurisdiction -- Voting.

(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and includes all cities or towns within the precinct, except cities where a municipal justice court exists.

(2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.

(3) The territorial jurisdiction of county and municipal justice courts functioning as magistrates extends beyond the boundaries in Subsections (1) and (2):

(a) as set forth in Section 78A-2-220; and

(b) to the extent necessary to carry out magisterial functions under Subsection 77-7-23(2) regarding jailed persons.

[~~(4) For election of county justice court judges, all registered voters in the county justice court precinct may vote at the judge's retention election.~~]

Section 12. Section 78A-7-204 is amended to read:

78A-7-204. Offices of justice court judges.

(1) Justice court judges holding office in:

(a) county precincts are county justice court judges; and

(b) cities or towns are municipal justice court judges.

[~~(2) With the concurrence of the governing bodies of both the county and municipality, a justice court judge may hold both the offices of county and municipal justice court judge.~~]

[~~(3)~~] (2) The county legislative body may establish a single precinct or divide the county into multiple precincts to create county justice courts for public convenience.

[~~(4)~~] (3) (a) The governing body may assign as many justice court judges to a court as required for efficient judicial administration.

(b) If more than one judge is assigned to a court, any citations, informations, or complaints within that court shall be assigned to the judges at random.

[~~(5)~~] (4) A municipality or county may contract with any other municipality or municipalities within the county under Title 11, Chapter 13, Interlocal Cooperation Act, to establish a justice court. A justice court established under Title 11, Chapter 13, shall meet the requirements for certification under Section 78A-7-103. A justice court established under Title 11, Chapter 13, shall have territorial jurisdiction as if established separately.

Section 13. Section 78B-7-205 is amended to read:

78B-7-205. Service -- Income withholding -- Expiration.

(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

(a) make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered, transmit electronically a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 78B-7-113.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 78B-7-113 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

(5) After notice, as provided in Rule 4 of the Utah Rules of Civil Procedure, and hearing, a court may modify or vacate a child protective order [~~without~~] with a showing of substantial and material change in circumstances[~~, except that the criminal provisions of the child protective order may not be vacated within two years of issuance unless the petitioner:~~].

[~~(a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or~~]

[~~(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.~~]

(6) The child protective order expires 150 days after the date of the order unless a different date is set by the court. The court may not set a date more than 150 days after the date of the order without a finding of good cause. The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the order without a finding of good cause.

(7) Notwithstanding Subsections (5) and (6), unless the judge orders otherwise all child protective orders expire when the subject of the order is 18 years of age, unless the judge vacates the order earlier.

CHAPTER 209
S. B. 172
Passed March 3, 2011
Approved March 22, 2011
Effective May 10, 2011

POLITICAL SUBDIVISIONS ADMINISTRATION AMENDMENTS

Chief Sponsor: Howard A. Stephenson
House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill prohibits a political subdivision from appointing or hiring, in certain circumstances, a manager or similar position during an interim vacancy period.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits a council in a municipal council-manager form of government from:
  - appointing a manager during an interim vacancy period; and
  - entering into a contract that contains an automatic renewal provision on or after May 10, 2011, with a manager;
- prohibits a mayor in a municipal council-mayor form of government from:
  - appointing a chief administrative officer during an interim vacancy period; and
  - entering into a contract that contains an automatic renewal provision on or after May 10, 2011, with a chief administrative officer;
- prohibits a council in a municipal six-member council form of government from:
  - appointing a manager during an interim vacancy period; and
  - entering into a contract that contains an automatic renewal provision on or after May 10, 2011, with a manager;
- prohibits a council in a municipal five-member council form of government from:
  - appointing a manager during an interim vacancy period; and
  - entering into a contract that contains an automatic renewal provision on or after May 10, 2011, with a manager;
- prohibits a council in a county council-manager form of government from:
  - appointing a county manager during an interim vacancy period; and
  - entering into a contract that contains an automatic renewal provision on or after May 10, 2011, with a county manager;
- prohibits a county executive from:
  - appointing a manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and
  - entering into a contract on or after May 10, 2011, that contains an automatic renewal provision with a chief executive officer, a chief administrative officer, or a similar position;
- prohibits a local district from:
  - hiring a manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and
  - entering into a contract on or after May 10, 2011, that contains an automatic renewal provision with a manager, a chief executive officer, a chief administrative officer, or a similar position;
- prohibits a special service district from:
  - hiring a manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and
  - entering into a contract on or after May 10, 2011, that contains an automatic renewal provision with a manager, a chief executive officer, a chief administrative officer, or a similar position;
- prohibits a local school board from:
  - appointing a superintendent during an interim vacancy period; and
  - entering into a contract on or after May 10, 2011, that contains an automatic renewal provision with a superintendent; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3b-103, as enacted by Laws of Utah 2008, Chapter 19
10-3b-202, as enacted by Laws of Utah 2008, Chapter 19
10-3b-303, as enacted by Laws of Utah 2008, Chapter 19
10-3b-403, as enacted by Laws of Utah 2008, Chapter 19
10-3b-503, as enacted by Laws of Utah 2008, Chapter 19
17-52-505, as renumbered and amended by Laws of Utah 2000, Chapter 133
17-53-302, as last amended by Laws of Utah 2001, Chapters 199 and 241
17-53-317, as enacted by Laws of Utah 2001, Chapter 241
17B-1-301, as renumbered and amended by Laws of Utah 2007, Chapter 329
17D-1-106, as last amended by Laws of Utah 2009, Chapters 181 and 356
53A-3-301, as last amended by Laws of Utah 2003, Chapters 231 and 315

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

Section 1. Section 10-3b-103 is amended to read:

10-3b-103. Forms of municipal government -- Form of government for towns -- Former council-manager form.

(1) A municipality operating on May 4, 2008, under the council-mayor form of government:

(a) shall, on and after May 5, 2008:

(i) operate under a council-mayor form of government, as defined in Section 10-3b-102; and

(ii) be subject to:

(A) this part;

(B) Part 2, Council-mayor Form of Municipal Government;

(C) Part 5, Changing to Another Form of Municipal Government; and

(D) except as provided in Subsection (1)(b), other applicable provisions of this title; and

(b) is not subject to:

(i) Part 3, Six-member Council Form of Municipal Government; or

(ii) Part 4, Five-member Council Form of Municipal Government.

(2) A municipality operating on May 4, 2008 under a form of government known under the law then in effect as the six-member council form:

(a) shall, on and after May 5, 2008, and whether or not the council has adopted an ordinance appointing a manager for the municipality:

(i) operate under a six-member council form of government, as defined in Section 10-3b-102;

(ii) be subject to:

(A) this part;

(B) Part 3, Six-member Council Form of Municipal Government;

(C) Part 5, Changing to Another Form of Municipal Government; and

(D) except as provided in Subsection (2)(b), other applicable provisions of this title; and

(b) is not subject to:

(i) Part 2, Council-mayor Form of Municipal Government; or

(ii) Part 4, Five-member Council Form of Municipal Government.

(3) A municipality operating on May 4, 2008, under a form of government known under the law then in effect as the five-member council form:

(a) shall, on and after May 5, 2008:

(i) operate under a five-member council form of government, as defined in Section 10-3b-102;

(ii) be subject to:

(A) this part;

(B) Part 4, Five-member Council Form of Municipal Government;

(C) Part 5, Changing to Another Form of Municipal Government; and

(D) except as provided in Subsection (3)(b), other applicable provisions of this title; and

(b) is not subject to:

(i) Part 2, Council-mayor Form of Municipal Government; or

(ii) Part 3, Six-member Council Form of Municipal Government.

(4) Subject to Subsection (5), each municipality incorporated on or after May 5, 2008, shall operate under:

(a) the council-mayor form of government, with a five-member council;

(b) the council-mayor form of government, with a seven-member council;

(c) the six-member council form of government; or

(d) the five-member council form of government.

(5) Each town shall operate under a five-member council form of government unless:

(a) before May 5, 2008, the town has changed to another form of municipal government; or

(b) on or after May 5, 2008, the town changes its form of government as provided in Part 5, Changing to Another Form of Municipal Government.

(6) (a) As used in this Subsection (6), "council-manager form of government" means the form of municipal government:

(i) provided for in Laws of Utah 1977, Chapter 48;

(ii) that cannot be adopted without voter approval; and

(iii) that provides for, subject to Subsections (7) and (8), an appointed manager with duties and responsibilities established in Laws of Utah 1977, Chapter 48.

(b) A municipality operating on May 4, 2008, under the council-manager form of government:

(i) shall:

(A) continue to operate, on and after May 5, 2008, under the council-manager form of government according to the applicable provisions of Laws of Utah 1977, Chapter 48; and

(B) be subject to:

(I) this Subsection (6) and other applicable provisions of this part;

(II) Part 5, Changing to Another Form of Municipal Government; and

(III) except as provided in Subsection (6)(b)(ii), other applicable provisions of this title; and

(ii) is not subject to:

(A) Part 2, Council-mayor Form of Municipal Government;

(B) Part 3, Six-member Council Form of Municipal Government; or

(C) Part 4, Five-member Council Form of Municipal Government.

(7) (a) As used in this Subsection (7), "interim vacancy period" means the period of time that:

(i) begins on the day on which a municipal general election described in Section 10-3-201 is held to elect a council member; and

(ii) ends on the day on which the council member-elect begins the council member's term.

(b) (i) The council may not appoint a manager during an interim vacancy period.

(ii) Notwithstanding Subsection (7)(b)(i):

(A) the council may appoint an interim manager during an interim vacancy period; and

(B) the interim manager's term shall expire once a new manager is appointed by the new administration after the interim vacancy period has ended.

(c) Subsection (7)(b) does not apply if all the council members who held office on the day of the municipal general election whose term of office was vacant for the election are re-elected to the council for the following term.

(8) A council that appoints a manager in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the manager.

[~~(7)~~] (9) Nothing in this section may be construed to prevent or limit a municipality operating under any form of municipal government from changing to another form of government as provided in Part 5, Changing to Another Form of Municipal Government.

Section 2. Section 10-3b-202 is amended to read:

10-3b-202. Mayor in council-mayor form of government.

(1) The mayor in a municipality operating under the council-mayor form of government:

(a) is the chief executive and administrative officer of the municipality;

(b) exercises the executive and administrative powers and performs or supervises the performance of the executive and administrative duties and functions of the municipality;

(c) shall:

(i) keep the peace and enforce the laws of the municipality;

(ii) execute the policies adopted by the council;

(iii) appoint, with the council's advice and consent, a qualified person for each of the following positions:

(A) subject to Subsection (3), chief administrative officer, if required under the resolution or petition under Subsection 10-3b-503(1)(a) that proposed the change to a council-mayor form of government;

(B) recorder;

(C) treasurer;

(D) engineer; and

(E) attorney;

(iv) provide to the council, at intervals provided by ordinance, a written report to the council setting forth:

(A) the amount of budget appropriations;

(B) total disbursements from the appropriations;

(C) the amount of indebtedness incurred or contracted against each appropriation, including disbursements and indebtedness incurred and not paid; and

(D) the percentage of the appropriations encumbered;

(v) report to the council the condition and needs of the municipality;

(vi) report to the council any release granted under Subsection (1)(d)(xiii);

(vii) if the mayor remits a fine or forfeiture under Subsection (1)(d)(xi), report the remittance to the council at the council's next meeting after the remittance;

(viii) perform each other duty:

(A) prescribed by statute; or

(B) required by a municipal ordinance that is not inconsistent with statute;

(d) may:

(i) subject to budget constraints:

(A) appoint:

(I) subject to Subsections (3)(b) and (4), a chief administrative officer; and

(II) one or more deputies or administrative assistants to the mayor; and

(B) (I) create any other administrative office that the mayor considers necessary for good government of the municipality; and

(II) appoint a person to the office;

(ii) with the council's advice and consent and except as otherwise specifically limited by statute, appoint:

(A) each department head of the municipality;

(B) each statutory officer of the municipality; and

(C) each member of a statutory commission, board, or committee of the municipality;

(iii) dismiss any person appointed by the mayor;

(iv) as provided in Section 10-3b-204, veto an ordinance, tax levy, or appropriation passed by the council;

(v) exercise control of and supervise each executive or administrative department, division, or office of the municipality;

(vi) within the general provisions of statute and ordinance, regulate and prescribe the powers and duties of each other executive or administrative officer or employee of the municipality;

(vii) attend each council meeting, take part in council meeting discussions, and freely give advice to the council;

(viii) appoint a budget officer to serve in place of the mayor to comply with and fulfill in all other respects the requirements of, as the case may be:

(A) Chapter 5, Uniform Fiscal Procedures Act for Utah Towns; or

(B) Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;

(ix) execute an agreement on behalf of the municipality, or delegate, by written executive order, the authority to execute an agreement on behalf of the municipality:

(A) if the obligation under the agreement is within certified budget appropriations; and

(B) subject to Section 10-6-138;

(x) at any reasonable time, examine and inspect the official books, papers, records, or documents of:

(A) the municipality; or

(B) any officer, employee, or agent of the municipality;

(xi) remit fines and forfeitures;

(xii) if necessary, call on residents of the municipality over the age of 21 years to assist in enforcing the laws of the state and ordinances of the municipality; and

(xiii) release a person imprisoned for a violation of a municipal ordinance; and

(e) may not vote on any matter before the council.

(2) (a) The first mayor elected under a newly established mayor-council form of government shall, within six months after taking office, draft and submit to the council a proposed ordinance:

(i) providing for the division of the municipality's administrative service into departments, divisions, and bureaus; and

(ii) defining the functions and duties of each department, division, and bureau.

(b) Before the council adopts an ordinance on the municipality's administrative service, the mayor may establish temporary rules and regulations to ensure efficiency and effectiveness in the divisions of the municipal government.

(3) (a) As used in this Subsection (3), "interim vacancy period" means the period of time that:

(i) begins on the day on which a municipal general election described in Section 10-3-201 is held to elect a mayor; and

(ii) ends on the day on which the mayor-elect begins the mayor's term.

[~~(3)~~] (b) Each person appointed as chief administrative officer under Subsection (1)(c)(iii)(A) shall be appointed on the basis of:

[~~(a)~~] (i) the person's ability and prior experience in the field of public administration; and

[~~(b)~~] (ii) any other qualification prescribed by ordinance.

(c) (i) The mayor may not appoint a chief administrative officer during an interim vacancy period.

(ii) Notwithstanding Subsection (3)(c)(i):

(A) the mayor may appoint an interim chief administrative officer during an interim vacancy period; and

(B) the interim chief administrative officer's term shall expire once a new chief administrative officer is appointed by the new mayor after the interim vacancy period has ended.

(d) Subsection (3)(c) does not apply if the mayor who holds office on the day of the municipal general election is re-elected to the mayor's office for the following term.

(4) A mayor who appoints a chief administrative officer in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the chief administrative officer.

Section 3. Section 10-3b-303 is amended to read:

10-3b-303. Council in six-member council form of government.

(1) The council in a municipality operating under a six-member council form of government:

(a) exercises any executive or administrative power and performs or supervises the performance of any executive or administrative duty or function that:

(i) has not been given to the mayor under Section 10-3b-104; or

(ii) has been given to the mayor under Section 10-3b-104 but is removed from the mayor under Subsection (1)(b)(i)(A);

(b) may:

(i) subject to Subsections (1)(c) and (2), adopt an ordinance:

(A) removing from the mayor any power, duty, or function of the mayor under Section 10-3b-104; or

(B) reinstating to the mayor any power, duty, or function previously removed under Subsection (1)(b)(i)(A);

(ii) adopt an ordinance delegating to the mayor any executive or administrative power, duty, or

function that the council has under Subsection (1)(a);

(iii) subject to Subsection 10-3b-302(1)(b)(ii)(A):

(A) appoint, subject to Subsections (3) and (4), a manager to perform executive and administrative duties or functions that the council by ordinance delegates to the manager, subject to Subsection (1)(c); and

(B) dismiss a manager appointed under Subsection (1)(b)(iii)(A); and

(iv) assign any or all council members, including the mayor, to supervise one or more administrative departments of the municipality; and

(c) may not remove from the mayor or delegate to a manager appointed by the council:

(i) any of the mayor's legislative or judicial powers or ceremonial functions;

(ii) the mayor's position as chair of the council; or

(iii) any ex officio position that the mayor holds.

(2) Adopting an ordinance under Subsection (1)(b)(i) removing from or reinstating to the mayor a power, duty, or function provided for in Section 10-3b-104 requires the affirmative vote of:

(a) the mayor and a majority of all other council members; or

(b) all council members except the mayor.

(3) (a) As used in this Subsection (3), "interim vacancy period" means the period of time that:

(i) begins on the day on which a municipal general election described in Section 10-3-201 is held to elect a council member; and

(ii) ends on the day on which the council member-elect begins the council member's term.

(b) (i) The council may not appoint a manager during an interim vacancy period.

(ii) Notwithstanding Subsection (3)(b)(i):

(A) the council may appoint an interim manager during an interim vacancy period; and

(B) the interim manager's term shall expire once a new manager is appointed by the new administration after the interim vacancy period has ended.

(c) Subsection (3)(b) does not apply if all the council members who held office on the day of the municipal general election whose term of office was vacant for the election are re-elected to the council for the following term.

(4) A council that appoints a manager in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the manager.

Section 4. Section 10-3b-403 is amended to read:

10-3b-403. Council in a five-member council form of government.

(1) The council in a municipality operating under a five-member council form of municipal government:

(a) exercises any executive or administrative power and performs or supervises the performance of any executive or administrative duty or function that:

(i) has not been given to the mayor under Section 10-3b-104; or

(ii) has been given to the mayor under Section 10-3b-104 but is removed from the mayor under Subsection (1)(b)(i)(A);

(b) may:

(i) subject to Subsections (1)(c) and (2), adopt an ordinance:

(A) removing from the mayor any power, duty, or function of the mayor under Section 10-3b-104; and

(B) reinstating to the mayor any power, duty, or function previously removed under Subsection (1)(b)(i)(A);

(ii) adopt an ordinance delegating to the mayor any executive or administrative power, duty, or function that the council has under Subsection (1)(a);

(iii) subject to Subsections (3) and (4), appoint a manager to perform executive and administrative duties or functions that the council by ordinance delegates to the manager, subject to Subsection (1)(c);

(iv) dismiss a manager appointed under Subsection (1)(b)(iii); and

(v) assign any or all council members, including the mayor, to supervise one or more administrative departments of the municipality; and

(c) may not remove from the mayor or delegate to a manager appointed by the council:

(i) any of the mayor's legislative or judicial powers or ceremonial functions;

(ii) the mayor's position as chair of the council; or

(iii) any ex officio position that the mayor holds.

(2) Adopting an ordinance under Subsection (1)(b)(i) removing from or reinstating to the mayor a power, duty, or function provided for in Section 10-3b-104 requires the affirmative vote of:

(a) the mayor and a majority of all other council members; or

(b) all council members except the mayor.

(3) (a) As used in this Subsection (3), "interim vacancy period" means the period of time that:

(i) begins on the day on which a municipal general election described in Section 10-3-201 is held to elect a council member; and

(ii) ends on the day on which the council member-elect begins the council member's term.

(b) (i) The council may not appoint a manager during an interim vacancy period.

(ii) Notwithstanding Subsection (3)(b)(i):

(A) the council may appoint an interim manager during an interim vacancy period; and

(B) the interim manager's term shall expire once a new manager is appointed by the new administration after the interim vacancy period has ended.

(c) Subsection (3)(b) does not apply if all the council members who held office on the day of the municipal general election whose term of office was vacant for the election are re-elected to the council for the following term.

(4) A council that appoints a manager in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the manager.

Section 5. Section 10-3b-503 is amended to read:

10-3b-503. Resolution or petition proposing a change in the form of government.

(1) The process to change the form of government under which a municipality operates is initiated by:

(a) the council's adoption of a resolution proposing a change; or

(b) the filing of a petition, as provided in Title 20A, Chapter 7, Part 5, Local Initiatives - Procedures, proposing a change.

(2) Within 45 days after the adoption of a resolution under Subsection (1)(a) or the declaring of a petition filed under Subsection (1)(b) as sufficient under Section 20A-7-507, the council shall hold at least two public hearings on the proposed change.

(3) (a) Except as provided in Subsection (3)(b), the council shall hold an election on the proposed change in the form of government at the next municipal general election or regular general election that is more than 75 days after, as the case may be:

(i) a resolution under Subsection (1)(a) is adopted; or

(ii) a petition filed under Subsection (1)(b) is declared sufficient under Section 20A-7-507.

(b) Notwithstanding Subsection (3)(a), an election on a proposed change in the form of government may not be held if:

(i) in the case of a proposed change initiated by the council's adoption of a resolution under Subsection (1)(a), the council rescinds the resolution within 60 days after adopting it; or

(ii) in the case of a proposed change initiated by a petition under Subsection (1)(b), enough signatures are withdrawn from the petition within 60 days after the petition is declared sufficient under Section 20A-7-507 that the petition is no longer sufficient.

(4) Each resolution adopted under Subsection (1)(a) or petition filed under Subsection (1)(b) shall:

(a) state the method of election and initial terms of council members; and

(b) specify the boundaries of districts substantially equal in population, if some or all council members are to be elected by district.

(5) A resolution under Subsection (1)(a) or petition under Subsection (1)(b) proposing a change to a council-mayor form of government may require that, if the change is adopted, the mayor appoint, with the council's advice and consent and subject to Section 10-3b-202, a chief administrative officer, to exercise the administrative powers and perform the duties that the mayor prescribes.

Section 6. Section 17-52-505 is amended to read:

17-52-505. Council-manager form of county government.

(1) (a) A county operating under the form of government known as the "council-manager" form shall be governed by an elected county council, a county manager appointed by the council, and such other officers and employees as are authorized by law.

(b) The optional plan shall provide for the qualifications, time and manner of appointment[~~,~~] subject to Subsections (6) and (7), term of office, compensation, and removal of the county manager.

(2) The county manager shall be the administrative head of the county government and shall have the powers, functions, and duties of a county executive, except:

(a) as the county legislative body otherwise provides by ordinance; and

(b) that the county manager may not veto any ordinances enacted by the council.

(3) (a) No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the manager in the making of any appointment or removal of any officer or employee or in the purchase of supplies, attempt to exact any promise relative to any appointment from any candidate for manager, or discuss directly or indirectly with him the matter of specific appointments to any county office or employment. [~~A violation of the foregoing~~]

(b) (i) A person who violates the provisions of this Subsection (3) shall forfeit the office of the offending member of the council.

(ii) Nothing in this section shall be construed, however, as prohibiting the council while in open session from fully and freely discussing with or suggesting to the manager anything pertaining to county affairs or the interests of the county.

(iii) Neither manager nor any person in the employ of the county shall take part in securing, or

contributing any money toward, the nomination or election of any candidate for a county office.

(iv) The optional plan may provide procedures for implementing this Subsection (3).

(4) In the council-manager form of county government, the legislative powers of the county shall be vested in the county council, and the executive powers of the county shall be vested in the county manager.

(5) A reference in statute or state rule to the "governing body" or the "board of county commissioners" of the county, in the council-manager form of county government, means:

(a) the county council, with respect to legislative functions, duties, and powers; and

(b) the county manager, with respect to executive functions, duties, and powers.

(6) (a) As used in this Subsection (6), "interim vacancy period" means the period of time that:

(i) begins on the day on which a general election described in Section 17-16-6 is held to elect a council member; and

(ii) ends on the day on which the council member-elect begins the council member's term.

(b) (i) The county council may not appoint a county manager during an interim vacancy period.

(ii) Notwithstanding Subsection (6)(b)(i):

(A) the county council may appoint an interim county manager during an interim vacancy period; and

(B) the interim county manager's term shall expire once a new county manager is appointed by the new administration after the interim vacancy period has ended.

(c) Subsection (6)(b) does not apply if all the county council members who held office on the day of the county general election whose term of office was vacant for the election are re-elected to the council for the following term.

(7) A county council that appoints a county manager in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the county manager.

Section 7. Section 17-53-302 is amended to read:

17-53-302. County executive duties.

Each county executive shall:

(1) exercise supervisory control over all functions of the executive branch of county government;

(2) direct and organize the management of the county in a manner consistent with state law, county ordinance, and the county's optional plan of county government;

(3) carry out programs and policies established by the county legislative body;

(4) faithfully ensure compliance with all applicable laws and county ordinances;

(5) exercise supervisory and coordinating control over all departments of county government;

(6) except as otherwise vested in the county legislative body by state law or by the optional plan of county government, and subject to Section 17-53-317, appoint, suspend, and remove the directors of all county departments and all appointive officers of boards and commissions;

(7) except as otherwise delegated by statute to another county officer, exercise administrative and auditing control over all funds and assets, tangible and intangible, of the county;

(8) except as otherwise delegated by statute to another county officer, supervise and direct centralized budgeting, accounting, personnel management, purchasing, and other service functions of the county;

(9) conduct planning studies and make recommendations to the county legislative body relating to financial, administrative, procedural, and operational plans, programs, and improvements in county government;

(10) maintain a continuing review of expenditures and of the effectiveness of departmental budgetary controls;

(11) develop systems and procedures, not inconsistent with statute, for planning, programming, budgeting, and accounting for all activities of the county;

(12) if the county executive is an elected county executive, exercise a power of veto over ordinances enacted by the county legislative body, including an item veto upon budget appropriations, in the manner provided by the optional plan of county government;

(13) review, negotiate, approve, and execute contracts for the county, unless otherwise provided by statute;

(14) perform all other functions and duties required of the executive by state law, county ordinance, and the optional plan of county government; and

(15) sign on behalf of the county all deeds that convey county property.

Section 8. Section 17-53-317 is amended to read:

17-53-317. Executive appointment with advice and consent of county legislative body.

(1) The appointment of a person to fill a position on a board, committee, or similar body whose membership is appointed by the county shall be by the county executive, with the advice and consent of the county legislative body.

(2) (a) As used in this Subsection (2), "interim vacancy period" means:

(i) for a county commission form or expanded county commission form of government, the period of time that:

(A) begins on the day on which a general election described in Section 17-16-6 is held to elect a commission member; and

(B) ends on the day on which the commission member-elect begins the council member's term; or

(ii) for a county executive-council form of government, the period of time that:

(A) begins on the day on which a general election described in Section 17-16-6 is held to elect a county executive; and

(B) ends on the day on which the county executive-elect begins the county executive's term.

(b) (i) A county commission in a county commission form of government, or a county commission in an expanded county commission form of government, may not appoint during an interim period vacancy a manager, a chief executive officer, a chief administrative officer, or a similar position to perform executive and administrative duties or functions.

(ii) Notwithstanding Subsection (2)(b)(i):

(A) a county commission in a county commission form of government, or a county commission in an expanded county commission form of government, may appoint an interim manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and

(B) the interim appointee's term shall expire once a new manager, a chief executive officer, a chief administrative officer, or a similar position is appointed by the new administration after the interim vacancy period has ended.

(c) Subsection (2)(b) does not apply if all the county commission members who held office on the day of the county general election whose term of office was vacant for the election are re-elected to the county commission for the following term.

(d) (i) A county executive in a county executive-council form of government may not appoint during an interim vacancy period a manager, a chief executive officer, a chief administrative officer, or a similar position to perform executive and administrative duties or functions.

(ii) Notwithstanding Subsection (2)(d)(i):

(A) a county executive in a county executive-council form of government may appoint an interim manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and

(B) the interim appointee's term shall expire once a new manager, a chief executive officer, a chief administrative officer, or a similar position is appointed by the new county executive after the interim vacancy period has ended.

(e) Subsection (2)(d) does not apply if the county executive who held office on the day of the county general election is re-elected to the office of county executive for the following term.

(3) A county commission in a county commission form of government, a county commission in an expanded county commission form of government, or a county executive in a county executive-council form of government that appoints a manager, a chief executive officer, a chief administrative officer, or a similar position in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the manager, chief executive officer, chief administrative officer, or similar position.

Section 9. Section 17B-1-301 is amended to read:

17B-1-301. Board of trustees duties and powers.

(1) (a) Each local district shall be governed by a board of trustees which shall manage and conduct the business and affairs of the district and shall determine all questions of district policy.

(b) All powers of a local district are exercised through the board of trustees.

(2) The board of trustees may:

(a) fix the location of the local district's principal place of business and the location of all offices and departments, if any;

(b) fix the times of meetings of the board of trustees;

(c) select and use an official district seal;

(d) subject to Subsections (3) and (4), employ employees and agents, or delegate to district officers power to employ employees and agents, for the operation of the local district and its properties and prescribe or delegate to district officers the power to prescribe the duties, compensation, and terms and conditions of employment of those employees and agents;

(e) require district officers and employees charged with the handling of district funds to provide surety bonds in an amount set by the board or provide a blanket surety bond to cover officers and employees;

(f) contract for or employ professionals to perform work or services for the local district that cannot satisfactorily be performed by the officers or employees of the district;

(g) through counsel, prosecute on behalf of or defend the local district in all court actions or other proceedings in which the district is a party or is otherwise involved;

(h) adopt bylaws for the orderly functioning of the board;

(i) adopt and enforce rules and regulations for the orderly operation of the local district or for carrying out the district's purposes;

(j) prescribe a system of civil service for district employees;

(k) on behalf of the local district, enter into contracts that the board considers to be for the benefit of the district;

(l) acquire, construct or cause to be constructed, operate, occupy, control, and use buildings, works, or other facilities for carrying out the purposes of the local district;

(m) on behalf of the local district, acquire, use, hold, manage, occupy, and possess property necessary to carry out the purposes of the district, dispose of property when the board considers it appropriate, and institute and maintain in the name of the district any action or proceeding to enforce, maintain, protect, or preserve rights or privileges associated with district property;

(n) delegate to a district officer the exercise of a district duty; and

(o) exercise all powers and perform all functions in the operation of the local district and its properties as are ordinarily exercised by the governing body of a political subdivision of the state and as are necessary to accomplish the purposes of the district.

(3) (a) As used in this Subsection (3), "interim vacancy period" means:

(i) if any member of the local district board is elected, the period of time that:

(A) begins on the day on which a municipal general election described in Section 17B-1-306 is held to elect a local district board member; and

(B) ends on the day on which the local district board member-elect begins the member's term; or

(ii) if any member of the local district board is appointed, the period of time that:

(A) begins on the day on which an appointing authority posts a notice of vacancy in accordance with Section 17B-1-304; and

(B) ends on the day on which the person who is appointed by the local district board to fill the vacancy begins the person's term.

(b) (i) The local district may not hire during an interim vacancy period a manager, a chief executive officer, a chief administrative officer, or a similar position to perform executive and administrative duties or functions.

(ii) Notwithstanding Subsection (3)(b)(i):

(A) the local district may hire an interim manager, a chief executive officer, a chief administrative officer, or a similar position during an interim vacancy period; and

(B) the interim manager's, chief executive officer's, chief administrative officer's, or similar position's employment shall terminate once a new manager, chief executive officer, chief administrative officer, or similar position is hired by the new local district board after the interim vacancy period has ended.

(c) Subsection (3)(b) does not apply if:

(i) all the elected local district board members who held office on the day of the municipal general election whose term of office was vacant for the election are re-elected to the local district board; and

(ii) all the appointed local district board members who were appointed whose term of appointment was expiring are re-appointed to the local district board.

(4) A local district board that hires an interim manager, a chief executive officer, a chief administrative officer, or a similar position in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the interim manager, chief executive officer, chief administrative officer, or similar position.

Section 10. Section 17D-1-106 is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, and 17B-1-118;

(b) Subsections 17B-1-301(3) and (4), Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, and 17B-1-313;

(c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

Section 11. Section 53A-3-301 is amended to read:

53A-3-301. Superintendent of schools -- Appointment -- Qualifications -- Term -- Compensation.

(1) [~~A~~] Subject to Subsection (7), a local school board shall appoint a district superintendent of schools who serves as the board's chief executive officer.

(2) (a) The local school board shall appoint the superintendent on the basis of outstanding professional qualifications.

(b) (i) The superintendent's term of office is for two years and until, subject to Subsection (7), a successor is appointed and qualified.

(ii) A local school board that appoints a superintendent in accordance with this section may not, on or after May 10, 2011, enter into an employment contract that contains an automatic renewal provision with the superintendent.

(3) [~~If~~] Unless a vacancy occurs during an interim vacancy period subject to Subsection (7), if it becomes necessary to appoint an interim superintendent due to a vacancy in the office of superintendent, then the local school board shall make an appointment during a public meeting for an indefinite term not to exceed one year, which term shall end upon the appointment and qualification of a new superintendent.

(4) (a) The superintendent shall hold an administrative/supervisory license issued by the State Board of Education, except as otherwise provided in Subsection (4)(b).

(b) A local school board [~~of education~~] may request, and the State Board of Education may grant, a letter of authorization permitting a person with outstanding professional qualifications to serve as superintendent without holding an administrative/supervisory license.

(5) The local school board shall set the superintendent's compensation for services.

(6) The superintendent qualifies for office by taking the constitutional oath of office.

(7) (a) As used in this Subsection (7), "interim vacancy period" means the period of time that:

(i) begins on the day on which a general election described in Section 20A-1-202 is held to elect a member of a local school board; and

(ii) ends on the day on which the member-elect begins the member's term.

(b) (i) The local school board may not appoint a superintendent during an interim vacancy period.

(ii) Notwithstanding Subsection (7)(b)(i):

(A) the local school board may appoint an interim superintendent during an interim vacancy period; and

(B) the interim superintendent's term shall expire once a new superintendent is appointed by the new local school board after the interim vacancy period has ended.

(c) Subsection (7)(b) does not apply if all the local school board members who held office on the day of the general election whose term of office was vacant for the election are re-elected to the local school board for the following term.

CHAPTER 210
S. B. 178
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

MUNICIPAL LAND USE AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Dean Sanpei
Cosponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends municipal land use provisions relating to nonconforming uses and noncomplying structures.

Highlighted Provisions:

This bill:

- amends municipal land use provisions relating to nonconforming uses and noncomplying structures; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-511, as last amended by Laws of Utah 2010, Chapter 394

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

Section 1. Section 10-9a-511 is amended to read:

10-9a-511. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

(b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

(c) (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.

(ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.

(4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter

school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

(6) A municipal ordinance adopted under Section 10-1-203 may not:

(a) require physical changes in a structure with a legal nonconforming rental housing use[~~; or~~] unless the change is for:

(i) the reasonable installation of:

(A) a smoke detector that is plugged in or battery operated;

(B) a ground fault circuit interrupter protected outlet on existing wiring;

(C) street addressing;

(D) except as provided in Subsection (7), an egress bedroom window if the existing bedroom window is smaller than that required by current state building code;

(E) an electrical system or a plumbing system, if the existing system is not functioning or is unsafe as determined by an independent electrical or plumbing professional who is licensed in accordance with Title 58, Occupations and Professions;

(F) hand or guard rails; or

(G) occupancy separation doors as required by the International Residential Code; or

(ii) the abatement of a structure; or

(b) be enforced to terminate a legal nonconforming rental housing use.

(7) A municipality may not require a change described in Subsection (6)(a)(i)(D) if the change:

(a) would compromise the structural integrity of a building; or

(b) could not be completed in accordance with current building codes, including set-back and window well requirements.

[~~(7)~~] (8) A legal nonconforming rental housing use may not be terminated under Section 10-1-203.

CHAPTER 211
S. B. 180
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

MEDICAID REFORM

Sponsor: Chief Sponsor: Daniel R. LiljenquistHouse Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends the Medical Assistance Act and the Budgetary Procedures Act.

Highlighted Provisions:

This bill:

- requires the Department of Health to develop a proposal to modify the Medicaid program in a way that maximizes replacement of the fee-for-service delivery model with one or more risk-based delivery models;
- specifies criteria for the proposal;
- requires the department, to the extent possible, to develop the proposal with the input of stakeholder groups representing those who will be affected by the proposal.
- requires the department to report to the Legislature on the development of the proposal;
- requires the department to submit a request to the Centers for Medicare and Medicaid Services for waivers from federal law to implement the proposal;
- directs the department to implement the proposal in the fiscal year following the fiscal year in which the waivers are approved;
- provides definitions;
- creates the Medicaid Growth Reduction and Budget Stabilization Account restricted account;
- specifies conditions under which Medicaid growth savings shall be transferred or appropriated to the account;
- provides that Medicaid growth savings not transferred into the account shall be included in the base budget for the second following fiscal year;
- specifies the priority of the account's claim on General Fund revenue surplus;
- specifies how money in the account may be used;
- makes conforming amendments; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63J-1-312, as renumbered and amended by Laws of Utah 2009, Chapter 183
63J-1-314, as last amended by Laws of Utah 2009, Chapter 389 and renumbered and amended by Laws of Utah 2009, Chapter 183
63M-1-905, as last amended by Laws of Utah 2010, Chapters 245 and 278

ENACTS:

26-18-405, Utah Code Annotated 1953
63J-1-315, Utah Code Annotated 1953

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

Section 1. Section 26-18-405 is enacted to read:

26-18-405. Waivers to maximize replacement of fee-for-service delivery model.

(1) The department shall develop a proposal to amend the state plan for the Medicaid program in a way that maximizes replacement of the fee-for-service delivery model with one or more risk-based delivery models.

(2) The proposal shall:

(a) restructure the program's provider payment provisions to reward health care providers for delivering the most appropriate services at the lowest cost and in ways that, compared to services delivered before implementation of the proposal, maintain or improve recipient health status;

(b) restructure the program's cost sharing provisions and other incentives to reward recipients for personal efforts to:

(i) maintain or improve their health status; and

(ii) use providers that deliver the most appropriate services at the lowest cost;

(c) identify the evidence-based practices and measures, risk adjustment methodologies, payment systems, funding sources, and other mechanisms necessary to reward providers for delivering the most appropriate services at the lowest cost, including mechanisms that:

(i) pay providers for packages of services delivered over entire episodes of illness rather than for individual services delivered during each patient encounter; and

(ii) reward providers for delivering services that make the most positive contribution to a recipient's health status;

(d) limit total annual per-patient-per-month expenditures for services delivered through fee-for-service arrangements to total annual per-patient-per-month expenditures for services delivered through risk-based arrangements covering similar recipient populations and services; and

(e) limit the rate of growth in per-patient-per-month General Fund

expenditures for the program to the rate of growth in General Fund expenditures for all other programs, when the rate of growth in the General Fund expenditures for all other programs is greater than zero.

(3) To the extent possible, the department shall develop the proposal with the input of stakeholder groups representing those who will be affected by the proposal.

(4) No later than June 1, 2011, the department shall submit a written report on the development of the proposal to the Legislature's Executive Appropriations Committee, Social Services Appropriations Subcommittee, and Health and Human Services Interim Committee.

(5) No later than July 1, 2011, the department shall submit to the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services a request for waivers from federal statutory and regulatory law necessary to implement the proposal.

(6) After the request for waivers has been made, and prior to its implementation, the department shall report to the Legislature in accordance with Section 26-18-3 on any modifications to the request proposed by the department or made by the Centers for Medicare and Medicaid Services.

(7) The department shall implement the proposal in the fiscal year that follows the fiscal year in which the United States Secretary of Health and Human Services approves the request for waivers.

Section 2. Section 63J-1-312 is amended to read:

63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the [~~unreserved and undesignated~~] unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations, investment earnings, and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Budget Stabilization Restricted Account, as provided in Section 63J-1-315;

[~~(A)~~] (B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

[~~(B)~~] (C) excluding the investment earnings for the fiscal year and excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this

Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Budget Stabilization Restricted Account, as provided in Section 63J-1-315;

[~~(A)~~] (B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

[~~(B)~~] (C) excluding the investment earnings for the fiscal year and excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

[~~(4) (a) If, at the close of any fiscal year, there appear to be insufficient monies to pay additional debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus monies sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.~~]

[~~(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (4)(a) unless and until it is appropriated by the Legislature.~~]

[~~(c) If, after calculating the amount for transfers to the General Fund Budget Reserve Account, the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (4)(a), the Division of Finance shall reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to cover the debt service hold back.~~]

[~~(d) Notwithstanding Subsection (3), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (4) before making any transfers to the General Fund Budget Reserve Account or any other designation or allocation of General Fund revenue surplus.~~]

[~~(5) Notwithstanding Subsection (3), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back the transfers to the State Disaster Recovery Restricted Account under Section 63J-1-314 does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to eliminate the operating deficit.~~]

[~~(6)~~] (4) The Legislature may appropriate [~~monies~~] money from the General Fund Budget Reserve Account only to:

(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;

(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;

(c) pay retroactive tax refunds; or

(d) resolve an Education Fund budget deficit.

[~~(7)~~] (5) Interest generated from investments of money in the General Fund Budget Reserve Account shall be deposited into the General Fund.

Section 3. Section 63J-1-314 is amended to read:

63J-1-314. Deposits related to the Disaster Recovery Funding Act.

(1) As used in this section, "operating deficit" means that, at the end of the fiscal year, the [~~unreserved and undesignated~~] unassigned fund balance in the General Fund is less than zero.

(2) Except as provided under Subsection (3), [~~beginning with the fiscal year ending June 30, 2007,~~] at the end of each fiscal year and after the transfer of surplus General Fund revenues has been made to the Medicaid Budget Stabilization Restricted Account, as provided in Section 63J-1-315, and the General Fund Budget Reserve Account, as provided in Section 63J-1-312, the Division of Finance shall deposit an amount into the State Disaster Recovery Restricted Account, created in Section 53-2-403, calculated by:

(a) determining the amount of surplus General Fund revenues after the transfer to the Medicaid Budget Stabilization Restricted Account under Section 63J-1-315 and the General Fund Budget Reserve Account under Section 63J-1-312 [~~that is unrestricted and undesignated~~];

(b) calculating an amount equal to the lesser of:

(i) 25% of the amount determined under Subsection (2)(a); or

(ii) 6% of the total of the General Fund appropriation amount for the fiscal year in which the surplus occurs; and

(c) adding to the amount calculated under Subsection (2)(b) an amount equal to the lesser of:

(i) 25% more of the amount described in Subsection (2)(a); or

(ii) the amount necessary to replace, in accordance with this Subsection (2)(c), any amount

appropriated from the State Disaster Recovery Restricted Account within 10 fiscal years before the fiscal year in which the surplus occurs if:

(A) a surplus exists; and

(B) the Legislature appropriates money from the State Disaster Recovery Restricted Account that is not replaced by appropriation or as provided in this Subsection (2)(c).

(3) Notwithstanding Subsection (2)[~~: (a) if~~], if at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the [~~Division of Finance~~] division shall reduce the transfer to the State Disaster Recovery Restricted Account by the amount necessary to eliminate the operating deficit[~~; and~~].

[~~(b) for FY 2008-09 and FY 2009-10 only, the Division of Finance shall suspend the deposit provided under Subsection (2) to the State Disaster Recovery Restricted Account created under Section 53-2-403.~~]

Section 4. Section 63J-1-315 is enacted to read:

63J-1-315. Medicaid Growth Reduction and Budget Stabilization Restricted Account --Transfers of Medicaid growth savings -- Base budget adjustments.

(1) As used in this section:

(a) "Department" means the Department of Health created in Section 26-1-4.

(b) "Division" means the Division of Health Care Financing created within the department under Section 26-18-2.1.

(c) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(d) "Medicaid growth savings" means the Medicaid growth target minus Medicaid program expenditures, if Medicaid program expenditures are less than the Medicaid growth target.

(e) "Medicaid growth target" means Medicaid program expenditures for the previous year multiplied by 1.08.

(f) "Medicaid program" is as defined in Section 26-18-2.

(g) "Medicaid program expenditures" means total state revenue expended for the Medicaid program from the General Fund, including restricted accounts within the General Fund, during a fiscal year.

(h) "Medicaid program expenditures for the previous year" means total state revenue expended for the Medicaid program from the General Fund, including restricted accounts within the General Fund, during the fiscal year immediately preceding a fiscal year for which Medicaid program expenditures are calculated.

(i) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(j) "State revenue" means revenue other than federal revenue.

(k) "State revenue expended for the Medicaid program" includes money transferred or appropriated to the Medicaid Growth Reduction and Budget Stabilization Account only to the extent the money is appropriated for the Medicaid program by the Legislature.

(2) There is created within the General Fund a restricted account to be known as the Medicaid Growth Reduction and Budget Stabilization Account.

(3) (a) (i) Except as provided in Subsection (6), if, at the end of a fiscal year, there is a General Fund revenue surplus, the Division of Finance shall transfer an amount equal to Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and Budget Stabilization Account.

(ii) If the amount transferred is reduced to prevent an operating deficit, as provided in Subsection (6), the Legislature shall include, to the extent revenue is available, an amount equal to the reduction as an appropriation from the General Fund to the account in the base budget for the second fiscal year following the fiscal year for which the reduction was made.

(b) If, at the end of a fiscal year, there is not a General Fund revenue surplus, the Legislature shall include, to the extent revenue is available, an amount equal to Medicaid growth savings as an appropriation from the General Fund to the account in the base budget for the second fiscal year following the fiscal year for which the reduction was made.

(c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department implements the proposal developed under Section 26-18-405 to reduce the long-term growth in state expenditures for the Medicaid program, and to each fiscal year after that year.

(4) The Division of Finance shall calculate the amount to be transferred under Subsection (3):

(a) before transferring revenue from the General Fund revenue surplus to:

(i) the General Fund Budget Reserve Account under Section 63J-1-312 and;

(ii) the State Disaster Recovery Restricted Account under Section 63J-1-314;

(b) before earmarking revenue from the General Fund revenue surplus to the Industrial Assistance Account under Section 63M-1-905; and

(c) before making any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law.

(5) (a) If, at the close of any fiscal year, there appears to be insufficient money to pay additional

debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus money sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.

(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (5)(a) unless and until it is appropriated by the Legislature.

(c) If, after calculating the amount for transfer under Subsection (3), the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (5)(a), the Division of Finance shall reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to cover the debt service hold back.

(d) Notwithstanding Subsections (3) and (4), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (5) before making any transfers to the Medicaid Growth Reduction and Budget Stabilization Account or any other designation or allocation of General Fund revenue surplus.

(6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back earmarks to the Industrial Assistance Account under Section 63M-1-905, transfers to the State Disaster Recovery Restricted Account under Section 63J-1-314, transfers to the General Fund Budget Reserve Account under Section 63J-1-312, or earmarks and transfers to more than one of those accounts, in that order, does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to eliminate the operating deficit.

(7) The Legislature may appropriate money from the Medicaid Growth Reduction and Budget Stabilization Account only:

(a) if Medicaid program expenditures for the fiscal year for which the appropriation is made are estimated to be 108% or more of Medicaid program expenditures for the previous year; and

(b) for the Medicaid program.

(8) The Division of Finance shall deposit interest or other earnings derived from investment of Medicaid Growth Reduction and Budget Stabilization Account money into the General Fund.

Section 5. Section 63M-1-905 is amended to read:

63M-1-905. Loans, grants, and assistance -- Repayment -- Earned credits.

(1) (a) A company that qualifies under Section 63M-1-906 may receive loans, grants, or other financial assistance from the Industrial Assistance Account for expenses related to establishment, relocation, or development of industry in Utah.

(b) A company creating an economic impediment that qualifies under Section 63M-1-908 may in accordance with this part receive loans, grants, or other financial assistance from the restricted account for the expenses of the company creating an economic impediment related to:

(i) relocation to a rural area in Utah of the company creating an economic impediment; and

(ii) the siting of a replacement company.

(c) An entity offering an economic opportunity that qualifies under Section 63M-1-909 may:

(i) receive loans, grants, or other financial assistance from the restricted account for expenses related to the establishment, relocation, retention, or development of industry in the state; and

(ii) include infrastructure or other economic development precursor activities that act as a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of the state's tax base.

(2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the restricted account.

(b) Loans made under Subsection (2)(a) shall be structured so the intended repayment or return to the state, including cash or credit, equals at least the amount of the assistance together with an annual interest charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the restricted account shall be made only after the administrator has determined that the company has satisfied the conditions upon which the payment or earned credit was based.

(3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a system of earned credits that may be used to support grant payments or in lieu of cash repayment of a restricted account loan obligation.

(ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(b) (i) The administrator shall provide for a system of credits to be used to support grant payments or in lieu of cash repayment of a restricted account loan when loans are made to a company creating an economic impediment.

(ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(4) (a) A cash loan repayment or other cash recovery from a company receiving assistance under this section, including interest, shall be deposited into the restricted account.

(b) The administrator and the Division of Finance shall determine the manner of recognizing and accounting for the earned credits used in lieu of loan repayments or to support grant payments as provided in Subsection (3).

(5) (a) (i) At the end of each fiscal year, the [~~unrestricted, undesignated~~] General Fund revenue surplus balance after the transfers of surplus of General Fund revenues described in this Subsection (5)(a) shall be earmarked to the Industrial Assistance Account in an amount equal to any credit that has accrued under this part.

(ii) The earmark under Subsection (5)(a)(i) shall be capped at $50,000,000, at which time no subsequent contributions may be made and any interest accrued above the $50,000,000 cap shall be deposited into the General Fund.

(b) The earmark required by Subsection (5)(a) shall be made after the transfer of surplus General Fund revenues is made:

(i) to the Medicaid Growth Reduction and Budget Stabilization Restricted Account, as provided in Section 63J-1-315;

[~~(i)~~] (ii) to the General Fund Budget Reserve Account, as provided in Section 63J-1-312; and

[~~(ii) beginning with the fiscal year ending June 30, 2007~~]

(iii) to the State Disaster Recovery Restricted Account, as provided in Section 63J-1-314.

(c) These credit amounts may not be used for purposes of the restricted account as provided in this part until appropriated by the Legislature.

CHAPTER 212
S. B. 181
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

LOBBYIST DISCLOSURE AND REGULATION ACT REVISIONS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill amends the Lobbyist Disclosure and Regulation Act to amend definitions.

Highlighted Provisions:

This bill:

- amends the definition of "approved meeting or activity" to include certain meetings or activities approved by the governor or lieutenant governor for a public official who holds a position in the executive branch;
- amends the definition of "expenditure" to include admission to or attendance at certain events or travel to certain events; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2010, Chapter 325

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

Section 1. Section 36-11-102 is amended to read:

36-11-102. Definitions.

As used in this chapter:

(1) "Aggregate daily expenditures" means:

(a) for a single lobbyist, principal, or government officer, the total of all expenditures made within a calendar day by the lobbyist, principal, or government officer for the benefit of an individual public official;

(b) for an expenditure made by a member of a lobbyist group, the total of all expenditures made within a calendar day by every member of the lobbyist group for the benefit of an individual public official; or

(c) for a multiclient lobbyist, the total of all expenditures made by the multiclient lobbyist within a calendar day for the benefit of an individual public official, regardless of whether the expenditures were attributed to different clients.

(2) "Approved meeting or activity" means a meeting or activity:

(a) (i) to which a legislator is invited; and

[~~(b)~~] (ii) attendance at which is approved by:

[~~(i)~~] (A) the speaker of the House of Representatives, if the public official is a member of the House of Representatives; or

[~~(ii)~~] (B) the president of the Senate, if the public official is a member of the Senate[~~.~~]; or

(b) (i) to which a public official who holds a position in the executive branch of state government is invited; and

(ii) attendance at which is approved by the governor or the lieutenant governor.

(3) (a) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, given, donated, or transferred to an individual for the provision of services or ownership before any withholding required by federal or state law.

(b) "Compensation" includes:

(i) a salary or commission;

(ii) a bonus;

(iii) a benefit;

(iv) a contribution to a retirement program or account;

(v) a payment includable in gross income, as defined in Section 62, Internal Revenue Code, and subject to Social Security deductions, including a payment in excess of the maximum amount subject to deduction under Social Security law;

(vi) an amount that the individual authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; or

(vii) income based on an individual's ownership interest.

(4) "Compensation payor" means a person who pays compensation to a public official in the ordinary course of business:

(a) because of the public official's ownership interest in the compensation payor; or

(b) for services rendered by the public official on behalf of the compensation payor.

(5) "Executive action" means:

(a) a nomination or appointment by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) agency ratemaking proceedings; or

(d) an adjudicative proceeding of a state agency.

(6) (a) "Expenditure" means any of the items listed in this Subsection (6)(a) when given to or for the benefit of a public official unless consideration of equal or greater value is received:

(i) a purchase, payment, or distribution;

(ii) a loan, gift, or advance;

(iii) a deposit, subscription, or forbearance;

(iv) services or goods;

(v) money;

(vi) real property;

(vii) a ticket or admission to a sporting, recreational, or artistic event; or

(viii) a contract, promise, or agreement, whether or not legally enforceable, to provide any item listed in Subsections (6)(a)(i) through (vii).

(b) "Expenditure" does not mean:

(i) a commercially reasonable loan made in the ordinary course of business;

(ii) a campaign contribution reported in accordance with Title 20A, Chapter 11, Campaign and Financial Reporting Requirements;

(iii) printed informational material that is related to the performance of the recipient's official duties;

(iv) a devise or inheritance;

(v) any item listed in Subsection (6)(a) if:

(A) given by a relative;

(B) given by a compensation payor for a purpose solely unrelated to the public official's position as a public official; or

(C) (I) the item has a value of less than $10; and

(II) the aggregate daily expenditures do not exceed $10;

(vi) food or beverage that is provided at an event to which the following are invited:

(A) all members of the Legislature;

(B) all members of a standing or interim committee;

(C) all members of an official legislative task force;

(D) all members of a party caucus; or

(E) all members of a group described in Subsections (6)(b)(vi)(A) through (D) who are attending a meeting of a national organization whose primary purpose is addressing general legislative policy;

(vii) food or beverage that is provided at an event to a public official who is:

(A) giving a speech at the event;

(B) participating in a panel discussion at the event; or

(C) presenting or receiving an award at the event;

(viii) a plaque, commendation, or award presented in public and having a cash value not exceeding $50;

(ix) admission to or attendance at an event, the primary purpose of which is:

(A) to solicit contributions reportable under:

(I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or

(II) 2 U.S.C. Sec. 434; or

(B) charitable solicitation, as defined in Section 13-22-2;

(x) travel to, lodging at, food or beverage served at, and admission to an approved meeting or activity; [~~or~~]

(xi) sponsorship of an official event or official entertainment of an approved meeting or activity[~~.~~];

(xii) notwithstanding Subsection (6)(a)(vii), admission to or attendance at an event:

(A) that is sponsored by a governmental entity; or

(B) that is widely attended and related to a governmental duty of a public official; or

(xiii) travel to a widely attended event related to a governmental duty of a public official if that travel results in a financial savings to the state.

(7) (a) "Government officer" means:

(i) an individual elected to a position in state or local government, when acting within the government officer's official capacity; or

(ii) an individual appointed to or employed in a full-time position by state or local government, when acting within the scope of the individual's employment.

(b) "Government officer" does not mean a member of the legislative branch of state government.

(8) "Immediate family" means:

(a) a spouse;

(b) a child residing in the household; or

(c) an individual claimed as a dependent for tax purposes.

(9) "Legislative action" means:

(a) a bill, resolution, amendment, nomination, veto override, or other matter pending or proposed in either house of the Legislature or its committees or requested by a legislator; and

(b) the action of the governor in approving or vetoing legislation.

(10) "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

(11) (a) "Lobbyist" means:

(i) an individual who is employed by a principal; or

(ii) an individual who contracts for economic consideration, other than reimbursement for reasonable travel expenses, with a principal to lobby a public official.

(b) "Lobbyist" does not include:

(i) a government officer;

(ii) a member or employee of the legislative branch of state government;

(iii) a person while appearing at, or providing written comments to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or Title 63G, Chapter 4, Administrative Procedures Act;

(iv) a person participating on or appearing before an advisory or study task force, commission, board, or committee, constituted by the Legislature or any agency or department of state government, except legislative standing, appropriation, or interim committees;

(v) a representative of a political party;

(vi) an individual representing a bona fide church solely for the purpose of protecting the right to practice the religious doctrines of the church, unless the individual or church makes an expenditure that confers a benefit on a public official;

(vii) a newspaper, television station or network, radio station or network, periodical of general circulation, or book publisher for the purpose of publishing news items, editorials, other comments, or paid advertisements that directly or indirectly urge legislative or executive action; or

(viii) an individual who appears on the individual's own behalf before a committee of the Legislature or an agency of the executive branch of state government solely for the purpose of testifying in support of or in opposition to legislative or executive action.

(12) "Lobbyist group" means two or more lobbyists, principals, government officers, or any combination of lobbyists, principals, and officers who each contribute a portion of an expenditure made to benefit a public official or member of the public official's immediate family.

(13) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who represents two or more clients and divides the aggregate daily expenditure made to benefit a public official or member of the public official's immediate family between two or more of those clients.

(14) "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.

(15) "Public official" means:

(a) (i) a member of the Legislature;

(ii) an individual elected to a position in the executive branch of state government; or

(iii) an individual appointed to or employed in a position in the executive or legislative branch of state government if that individual:

(A) occupies a policymaking position or makes purchasing or contracting decisions;

(B) drafts legislation or makes rules;

(C) determines rates or fees; or

(D) makes adjudicative decisions; or

(b) an immediate family member of a person described in Subsection (15)(a).

(16) "Public official type" means a notation to identify whether a public official is:

(a) (i) a member of the Legislature;

(ii) an individual elected to a position in the executive branch of state government;

(iii) an individual appointed to or employed in a position in the legislative branch of state government who meets the definition of public official under Subsection (15)(a)(iii); or

(iv) an individual appointed to or employed in a position in the executive branch of state government who meets the definition of public official under Subsection (15)(a)(iii); or

(b) an immediate family member of a person described in Subsection (15)(b).

(17) "Quarterly reporting period" means the three-month period covered by each financial report required under Subsection 36-11-201(2)(a).

(18) "Related person" means a person, agent, or employee who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

(19) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse of any of these individuals.

CHAPTER 213
S. B. 184
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

DISPOSAL OF ELECTRONIC WASTE

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill enacts provisions related to consumer electronic device collection and recycling programs and consumer electronic device manufacturers.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits a manufacturer from offering a consumer electronic device for sale in the state unless the manufacturer meets certain reporting requirements to the Department of Environmental Quality;
- requires the Department of Environmental Quality to report on the manufacturer's reporting to the Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee;
- prohibits a manufacturer from offering a consumer electronic device for sale in the state unless the manufacturer establishes and implements a public education program on collection and recycling programs; and
- authorizes a local government to enter into an arrangement with a manufacturer to facilitate consumer electronics recycling.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
19-6-1201, Utah Code Annotated 1953
19-6-1202, Utah Code Annotated 1953
19-6-1203, Utah Code Annotated 1953
19-6-1204, Utah Code Annotated 1953
19-6-1205, Utah Code Annotated 1953

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

Section 1. Section 19-6-1201 is enacted to read:

Part 12. Disposal of Electronic Waste Program

19-6-1201. Title.

This part is known as the "Disposal of Electronic Waste Program."

Section 2. Section 19-6-1202 is enacted to read:

19-6-1202. Definitions.

As used in this part:

(1) "Collection":

(a) means the aggregation of consumer electronic devices from consumers; and

(b) includes all the activities up to the time a consumer electronic device is delivered to a recycler.

(2) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function, including:

(i) a laptop computer;

(ii) a desktop computer; or

(iii) a tablet computer.

(b) "Computer" includes the following permanently affixed to or incorporated into a device described in Subsection (2)(a):

(i) a cable cord;

(ii) permanent wiring;

(iii) a central processing unit; or

(iv) a monitor.

(c) "Computer" does not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, a server, or similar device.

(3) "Consumer" means a person who owns or uses a covered electronic device that is purchased primarily for personal or home business use.

(4) "Consumer electronic device" means the following products sold to a consumer:

(a) a computer;

(b) a computer peripheral;

(c) a television; or

(d) a television peripheral.

(5) "Eligible program" means a collection, reuse, or recycling system for a consumer electronic device, including:

(a) a system by which a manufacturer, manufacturer's designee, or other private entity offers a consumer an option to return a consumer electronic device by mail;

(b) a system using a physical collection site that a manufacturer, manufacturer's designee, or other private or public entity provides for a consumer to return a covered consumer electronic device; or

(c) a system that uses a collection event held by a manufacturer, manufacturer's designee, or other private or public entity at which a consumer may return a consumer electronic device.

(6) "Manufacturer" means a person who:

(a) manufactures a consumer electronic device under a brand the person owns or is licensed to use; or

(b) assumes the responsibilities and obligations of a person described in Subsection (6)(a).

(7) "Peripheral" means a keyboard, printer, or other device that:

(a) is sold exclusively for external use with a television or computer; and

(b) provides input into or output from a television or computer.

(8) (a) "Recycling" means the process of collecting and preparing electronic products for:

(i) use in a manufacturing process; or

(ii) recovery of reusable materials followed by delivery of reusable materials for use.

(b) "Recycling" does not include destruction by incineration, waste-to-energy incineration, or other similar processes or land disposal.

(9) "Reuse" means electronic waste:

(a) that is tested and determined to be in good working order; and

(b) that is removed from the waste stream to use for the same purpose for which it was manufactured, including the continued use of the whole system or components.

(10) (a) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a consumer electronic device to a consumer.

(b) "Sell" or "sale" does not include:

(i) the sale, resale, lease, or transfer of used consumer electronic devices; or

(ii) a manufacturer's or a distributor's wholesale transaction with a distributor or retailer involving a consumer electronic device.

(11) "Television" means a display system primarily intended to receive video programming via broadcast, cable, or satellite transmission.

Section 3. Section 19-6-1203 is enacted to read:

19-6-1203. Reporting requirements.

(1) On or after July 1, 2011, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer, either individually, through a group manufacturer organization, or through the manufacturer's industry trade group, prepares and submits, subject to Subsection (2), a report on or before August 1 of each year to the department.

(2) The report required under Subsection (1):

(a) shall include a list of eligible programs, subject to Subsection (3); and

(b) may include:

(i) an existing collection, transportation, or recycling system for a consumer electronic device; and

(ii) an eligible program offered by:

(A) a consumer electronic device recycler;

(B) a consumer electronic device repair shop;

(C) a recycler of other commodities;

(D) a reuse organization;

(E) a not-for-profit corporation;

(F) a retailer; or

(G) another similar operation, including a local government collection event.

(3) The list required in Subsection (2)(a) may be in the form of a geographic map identifying the type and location of an eligible program.

(4) The department shall:

(a) compile the report required under Subsection (1); and

(b) beginning on October 31, 2012, submit annually on or before October 31 the compiled report to the Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee.

Section 4. Section 19-6-1204 is enacted to read:

19-6-1204. Public education program.

(1) Effective January 1, 2012, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer individually, through a group manufacturer organization, or through the manufacturer's industry trade group establishes and implements, in accordance with Subsection (2), a public education program regarding the eligible programs.

(2) (a) The public education program required under Subsection (1) shall:

(i) inform a consumer about eligible programs; and

(ii) use manufacturer-developed customer outreach materials, such as packaging inserts, company websites, and other communication methods, to inform a consumer about eligible programs.

(b) A manufacturer described in Subsection (1) shall work with the department and other interested parties to develop educational materials that inform consumers about an eligible program.

Section 5. Section 19-6-1205 is enacted to read:

19-6-1205. Local government arrangement.

If a local government enters into an arrangement with a manufacturer to facilitate consumer electronics recycling in accordance with this part, the local government may enter into the arrangement without requiring a request for proposal or similar competitive procurement process required by law.

CHAPTER 214
S. B. 186
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

UTAH MEDICAL PRACTICE ACT AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends the Utah Medical Practice Act and the Utah Osteopathic Medical Practice Act by clarifying policies and procedures.

Highlighted Provisions:

This bill:

- amends definitions;
- prohibits an individual from using the title "doctor," "M.D." or "D.O." in a misleading manner;
- clarifies licensing requirements;
- clarifies disciplinary procedures; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2010, Chapter 180
58-37-6, as last amended by Laws of Utah 2010, Chapter 287
58-67-102, as last amended by Laws of Utah 2010, Chapter 101
58-67-302, as last amended by Laws of Utah 2009, Chapter 183
58-67-302.5, as last amended by Laws of Utah 2008, Chapter 250
58-67-304, as last amended by Laws of Utah 2005, Chapter 94
58-67-305, as last amended by Laws of Utah 2005, Chapter 2
58-67-401, as enacted by Laws of Utah 1996, Chapter 248
58-67-403, as enacted by Laws of Utah 1996, Chapter 248
58-67-503, as enacted by Laws of Utah 1996, Chapter 248
58-68-102, as last amended by Laws of Utah 2010, Chapter 101
58-68-302, as last amended by Laws of Utah 2009, Chapter 183
58-68-304, as last amended by Laws of Utah 2005, Chapter 94
58-68-305, as last amended by Laws of Utah 2005, Chapter 2
58-68-401, as enacted by Laws of Utah 1996, Chapter 248
58-68-403, as enacted by Laws of Utah 1996, Chapter 248
58-68-503, as enacted by Laws of Utah 1996, Chapter 248

REPEALS AND REENACTS:

58-67-402, as last amended by Laws of Utah 2008, Chapter 382
58-68-402, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 58-1-501 is amended to read:

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; or

(f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

(A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title; or

(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and

(ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call or

cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.

(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

(h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;

(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;

(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;

(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:

(i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or

(ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; or

(n) violating a provision of Section 58-1-501.5.

Section 2. Section 58-37-6 is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct

research with, or perform laboratory analysis upon controlled substances in Schedules II through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the person's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of the person's business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest. The division shall not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance. In determining public interest, the division shall consider whether or not the applicant has:

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

(iii) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(iv) past experience in the manufacture of controlled dangerous substances;

(v) established effective controls against diversion; and

(vi) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to [~~engage in the manufacturing, distribution, or dispensing of~~] manufacture, distribute, prescribe, or dispense controlled substances;

(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under

the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) (A) A prescription for a Schedule II substance may not be refilled.

(B) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

(v) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply;

(C) a second or third prescription shall include the date of issuance and the date for dispensing; and

(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

(vi) Each prescription for a controlled substance may contain only one controlled substance per prescription form and may not contain any other legend drug or prescription item.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a

controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through [~~(7)~~](o) is subject to a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through [~~(7)~~](j) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through [~~(7)~~](o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

Section 3. Section 58-67-102 is amended to read:

58-67-102. Definitions.

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

(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(2) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(4) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (4)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or

(d) to make an examination or determination as described in Subsection (4)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(5) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

(6) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.

(7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(8) "Practice of medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-67-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

(9) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

(10) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

(11) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(12) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

(13) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section 4. Section 58-67-302 is amended to read:

58-67-302. Qualifications for licensure.

(1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; [~~and~~]

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by [~~having received an earned degree of doctor of medicine from~~]:

[~~(i) an LCME accredited medical school or college; or~~]

[~~(ii) a medical school or college located outside of the United States or its jurisdictions which at the time of the applicant's graduation, met criteria for LCME accreditation;~~]

(i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or

(ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

[~~(e) hold a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant graduated from a medical school or college located outside of the United States or its jurisdictions;~~]

[~~(f)~~] (e) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or

(ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as a physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;

[~~(g)~~] (f) pass the licensing examination sequence required by division rule made in collaboration with the board;

[~~(h)~~] (g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;

[~~(i)~~] (h) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;

[~~(j)~~] (i) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

[~~(k)~~] (j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

[~~(c) not have any action pending against the applicant's license;~~]

[~~(d) not have a license that was suspended or revoked in any state, unless the license was subsequently reinstated as a full unrestricted license in good standing; and~~]

(c) comply with the requirements for licensure under Subsection (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice history review, and comprehensive assessments, if requested by the division in collaboration with the board; and

[~~(e)~~] (g) produce satisfactory evidence [~~of~~] that the [~~applicant's qualifications, identity, and good standing~~] applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is

practicing under the invitation of the health care facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).

Section 5. Section 58-67-302.5 is amended to read:

58-67-302.5. Licensing of graduates of foreign medical schools.

(1) Notwithstanding any other provision of law to the contrary, an individual enrolled in a medical school outside the United States, its territories, the District of Columbia, or Canada is eligible for licensure as a physician and surgeon in this state if the individual has satisfied the following requirements:

(a) meets all the requirements of [~~Section~~] Subsection 58-67-302(1), except for Subsection 58-67-302(1)(d);

(b) has studied medicine in a medical school located outside the United States which is recognized by an organization approved by the division;

(c) has completed all of the formal requirements of the foreign medical school except internship or social service;

(d) has attained a passing score on the educational commission for foreign medical graduates examination or other qualifying examinations such as the United States Medical Licensing Exam parts I and II, which are approved by the division or a medical school approved by the division;

(e) has satisfactorily completed one calendar year of supervised clinical training under the direction of a United States medical education setting accredited by the liaison committee for graduate medical education and approved by the division;

(f) has completed the postgraduate hospital training required by Subsection 58-67-302(1)[~~(f)~~](e)(i); and

(g) has passed the examination required by the division of all applicants for licensure.

(2) Satisfaction of the requirements of Subsection (1) is in lieu of:

(a) the completion of any foreign internship or social service requirements; and

(b) the certification required by Subsection 58-67-302(1)[~~(e)~~](d).

(3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.

(4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:

(a) the foreign medical school is recognized by an organization approved by the division;

(b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and

(c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).

(5) The provisions for licensure under this section shall be known as the "fifth pathway program."

Section 6. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)[~~(j)~~](i); and

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

Section 7. Section 58-67-305 is amended to read:

58-67-305. Exemptions from licensure.

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

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

(6) a medical assistant while working under the direct and immediate supervision of a licensed physician and surgeon, to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(7) an individual engaging in the practice of medicine when:

(a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and

(d) the individual does not otherwise engage in unlawful or unprofessional conduct; [~~and~~]

(8) an individual providing expert testimony in a legal proceeding[~~.~~]; and

(9) an individual who is invited by a school, association, society, or other body approved by the division to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:

(a) the individual does not establish a place of business in this state;

(b) the individual does not regularly engage in the practice of medicine in this state;

(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;

(d) the primary purpose of the event is the training of others in the practice of medicine; and

(e) neither the patient nor an insurer is billed for the services performed.

Section 8. Section 58-67-401 is amended to read:

58-67-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for division action [~~regarding the following are under Section~~] are set forth in Sections 58-1-401[~~:~~] and 58-67-503.

[~~(1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;~~]

[~~(2) revoking, suspending, restricting, or placing on probation the license of a licensee;~~]

[~~(3) assessing an administrative penalty; and~~]

[~~(4) issuing a public or private reprimand to a licensee or issuing a cease and desist order.~~]

Section 9. Section 58-67-402 is repealed and reenacted to read:

58-67-402. Authority to assess penalty.

The division in collaboration with the board may assess penalties as described in Section 58-67-503.

Section 10. Section 58-67-403 is amended to read:

58-67-403. Revocation of license -- Nondisciplinary.

Revocation by the division of a license under Subsection 58-67-302(1)[~~(f)~~](e) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Section 11. Section 58-67-503 is amended to read:

58-67-503. Penalties and administrative actions for unlawful and unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-67-501[~~, or Subsection~~] or Section 58-1-501[~~(1)(a) or 58-1-501(1)(c)~~] is guilty of a third degree felony.

[~~(2) The division may assess administrative penalties in accordance with the provisions of Section 58-67-402 for acts of unprofessional conduct.~~]

(2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:

(i) assessing administrative penalties; or

(ii) taking other appropriate administrative action.

(b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund created in Section 58-67a-1.

(3) If a licensee has been convicted of unlawful conduct, described in Section 58-67-501, before an administrative proceeding regarding the same conduct, the division may not assess an additional administrative fine under this chapter for the same conduct.

(4) (a) If the division concludes that an individual has violated provisions of Section 58-67-501, Section 58-67-502, the Division of Occupational and Professional Licensing Act, the Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or up to $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or

(ii) order to cease and desist from the behavior that constitutes a violation of the provisions described in Subsection (4)(a).

(c) An individual's license may not be suspended or revoked through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

(A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the Utah Rules of Civil Procedure.

(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after six months from the day on which the violation last occurred.

Section 12. Section 58-68-102 is amended to read:

58-68-102. Definitions.

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

(1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) "AOA" means the American Osteopathic Association.

(4) "Board" means the Osteopathic [~~Physicians~~] Physician and Surgeon's Licensing Board created in Section 58-68-201.

(5) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (5)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (5)(a); or

(d) to make an examination or determination as described in Subsection (5)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(6) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

(7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(8) "Practice of osteopathic medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-68-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah may use the designation "D.O." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

(9) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

(10) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

(11) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(12) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

(13) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section 13. Section 58-68-302 is amended to read:

58-68-302. Qualifications for licensure.

(1) An applicant for licensure as an osteopathic physician and surgeon, except as set forth in Subsection (2) [~~or (3)~~], shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; [~~and~~]

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by [~~having received an earned degree of doctor of osteopathic medicine from:(i) an AOA approved medical school or college; or (ii)~~]:

(i) having received an earned degree of doctor of osteopathic medicine from an AOA approved medical school or college; or

(ii) submitting a current certification by the Educational Commission for Foreign Medical

Graduates or any successor organization approved by the division in collaboration with the board, if the applicant is graduated from an osteopathic medical school or college located outside of the United States or its [~~jurisdictions~~] territories which at the time of the applicant's graduation, met criteria for accreditation by the AOA;

[~~(e) hold a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant graduated from a medical school or college located outside of the United States or its jurisdictions;~~]

[~~(f)~~] (e) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine required under Subsection (1)(d); or

(ii) (A) has successfully completed 12 months of resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME or AOA approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as an osteopathic physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME or AOA approved progressive resident training program within the state;

[~~(g)~~] (f) pass the licensing examination sequence required by division rule, as made in collaboration with the board;

[~~(h)~~] (g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

[~~(i)~~] (h) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure;

[~~(j)~~] (i) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

[~~(k)~~] (j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as an osteopathic physician and surgeon [~~qualifying under the~~] by endorsement [~~provision of Section 58-1-302~~] who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in [~~another jurisdiction as set forth in Section 58-1-302~~] any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

[~~(b) (i)~~] (c) [~~document having met all~~] comply with the requirements for licensure under [~~Subsection~~] Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j) [~~except, if an applicant received licensure in another state or jurisdiction based upon only 12 months residency training after graduation from medical school, the applicant may qualify for licensure in Utah by endorsement only if licensed in the other state prior to July 1, 1996; or~~];

[~~(ii) document having obtained licensure in another state or jurisdiction whose licensure requirements were at the time of obtaining licensure equal to licensure requirements at that time in Utah;~~]

[~~(c) have passed the SPEX examination within 12 months preceding the date of application for licensure in Utah if the date on which the applicant passed qualifying examinations for licensure is greater than five years prior to the date of the application for licensure in Utah, or meet medical specialty certification requirements which may be established by division rule made in collaboration with the board;~~]

[~~(d) have been actively engaged in the practice as an osteopathic physician and surgeon for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;~~]

[~~(e) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure; and~~]

[~~(f) not have a license that was suspended or revoked in any state, unless the license was subsequently reinstated as a full unrestricted license in good standing.~~]

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the

board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice review history, and physical and psychological assessments, if requested by the division in collaboration with the board; and

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

[~~(3) An applicant for licensure as an osteopathic physician and surgeon, who has been licensed as an osteopathic physician in Utah, who has allowed the applicant's license in Utah to expire for nonpayment of license fees, and who is currently licensed in good standing in another state or jurisdiction of the United States shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee determined by the department under Section 63J-1-504;~~]

[~~(c) be of good moral character;~~]

[~~(d) have passed the SPEX examination within 12 months preceding the date of application for licensure in Utah if the date on which the applicant passed qualifying examinations for licensure is greater than five years prior to the date of the application for licensure in Utah;~~]

[~~(e) have been actively engaged in the practice as an osteopathic physician for not fewer than 6,000 hours during the five years immediately preceding the date of application for licensure; and~~]

[~~(f) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure.~~]

[~~(4)~~] (3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the health care facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

[~~(5)~~] (4) The division shall issue a temporary license under Subsection [~~(4)~~] (3) within 15 business days after the applicant satisfies the requirements of Subsection [~~(4)~~] (3).

Section 14. Section 58-68-304 is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)[~~(j)~~](i); and

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)[~~(k)~~](j).

(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

Section 15. Section 58-68-305 is amended to read:

58-68-305. Exemptions from licensure.

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

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) permit a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to withdraw blood to determine the alcohol or drug content pursuant to Section 41-6a-523;

(6) a medical assistant while working under the direct and immediate supervision of a licensed osteopathic physician, to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(7) an individual engaging in the practice of osteopathic medicine when:

(a) the individual is licensed in good standing as an osteopathic physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and

(d) the individual does not otherwise engage in unlawful or unprofessional conduct; [~~and~~]

(8) an individual providing expert testimony in a legal proceeding[~~.~~]; and

(9) an individual who is invited by a school, association, society, or other body approved by the division in collaboration with the board to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:

(a) the individual does not establish a place of business in this state;

(b) the individual does not regularly engage in the practice of medicine in this state;

(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;

(d) the primary purpose of the event is the training of others in the practice of medicine; and

(e) neither the patient nor an insurer is billed for the services performed.

Section 16. Section 58-68-401 is amended to read:

58-68-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for division action [~~regarding the following are under Section~~] are set forth in Sections 58-1-401[~~:~~] and 58-68-503.

[~~(1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;~~]

[~~(2) revoking, suspending, restricting, placing on probation the license of a licensee;~~]

[~~(3) assessing an administrative penalty; and~~]

[~~(4) issuing of a public or private reprimand to a licensee or issuance of a cease and desist order.~~]

Section 17. Section 58-68-402 is repealed and reenacted to read:

58-68-402. Authority to assess penalties.

The division in collaboration with the board may assess penalties as described in Section 58-67-503.

Section 18. Section 58-68-403 is amended to read:

58-68-403. Revocation of license -- Nondisciplinary.

Revocation by the division of a license under Subsection 58-68-302(1)[~~(f)~~](e) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Section 19. Section 58-68-503 is amended to read:

58-68-503. Penalties and administrative actions for unlawful and unprofessional conduct.

(1) Any person who violates the unlawful conduct provisions of Section 58-68-501[~~, or Subsection~~] or Section 58-1-501[~~(1)(a) or 58-1-501(1)(c)~~] is guilty of a third degree felony.

[~~(2) The division may assess administrative penalties in accordance with Section 58-68-402, for acts of unprofessional conduct.~~]

(2) (a) Subject to Subsection (4), the division may punish unprofessional or unlawful conduct by:

(i) assessing administrative penalties; or

(ii) taking any other appropriate administrative action.

(b) A monetary administrative penalty imposed under this section shall be deposited in the Physician Education Fund described in Section 58-67a-1.

(3) If a licensee is convicted of unlawful conduct, described in Section 58-68-501, before an administrative proceeding regarding the same conduct, the licensee may not be assessed an administrative fine under this chapter for the same conduct.

(4) (a) If the division concludes that an individual has violated the provisions of Section 58-68-501, Section 58-68-502, the Division of Occupational and Professional Licensing Act, the Utah Controlled Substances Act, or any rule or order issued with respect to these provisions, and disciplinary action is appropriate, the director or director's designee shall:

(i) issue a citation to the individual;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the individual that an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act, will be commenced and the individual is invited to appear.

(b) The division may take the following action against an individual who is in violation of a provision described in Subsection (4)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding:

(i) assess a fine of up to $10,000 per single violation or $2,000 per day of ongoing violation, whichever is greater, in accordance with a fine schedule established by rule; or

(ii) order to cease and desist from the behavior that constitutes a violation of provisions described in Subsection (4)(a).

(c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-1-401 may not be assessed through a citation.

(d) Each citation issued under this section shall:

(i) be in writing;

(ii) clearly describe or explain:

(A) the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(B) that the recipient must notify the division in writing within 20 calendar days from the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(C) the consequences of failure to timely contest the citation or pay the fine assessed by the citation within the time specified in the citation; and

(iii) be served in accordance with the requirements of the Utah Rules of Civil Procedure.

(e) If the individual to whom the citation is issued fails to request a hearing to contest the citation within 20 calendar days from the day on which the citation is served, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.

(f) The division may refuse to issue or renew or suspend, revoke, or place on probation the license of an individual who fails to comply with a citation after the citation becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of a license.

(h) No citation may be issued under this section after six months from the day on which the last violation occurred.

CHAPTER 215
S. B. 188
Passed March 3, 2011
Approved March 22, 2011
Effective May 10, 2011

TAX COMMISSION AMENDMENTS

Chief Sponsor: John L. Valentine
House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill exempts certain State Tax Commission functions from the Open and Public Meetings Act.

Highlighted Provisions:

This bill:

- exempts the State Tax Commission from the Open and Public Meetings Act when considering or acting on certain confidential tax matters;
- grants rulemaking authority to the State Tax Commission to establish procedures and requirements related to a meeting that is not open to the public; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

52-4-103, as last amended by Laws of Utah 2007, Chapters 35 and 45

ENACTS:

59-1-405, Utah Code Annotated 1953

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

Section 1. Section 52-4-103 is amended to read:

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

(a) an electronic meeting originates; or

(b) the participants are connected.

(2) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(3) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(4) (a) "Meeting" means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance meeting;

(ii) a social meeting; [~~or~~]

(iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or

(B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action[~~.~~]; or

(iv) a meeting of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(6) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(7) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" does not include a:

(i) political party, political group, or political caucus; or

(ii) conference committee, rules committee, or sifting committee of the Legislature.

(8) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(9) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(10) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

Section 2. Section 59-1-405 is enacted to read:

59-1-405. Commission consideration of confidential tax matters.

(1) As used in this section, "confidential tax matter" means:

(a) an offer in compromise;

(b) a private letter ruling;

(c) an appeal before the members of the commission;

(d) a tax matter if the disclosure of the tax matter is prohibited under:

(i) federal law;

(ii) Section 59-1-403; or

(iii) Section 59-1-404;

(e) a voluntary disclosure agreement; or

(f) a waiver request.

(2) Notwithstanding Title 52, Chapter 4, Open and Public Meetings Act, the commission may hold a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential tax matter in accordance with the rules established as provided under this section.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(a) to establish procedures for holding a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential tax matter; and

(b) except as provided in Subsection (4), to establish procedures and requirements for keeping confidential minutes and a confidential recording of a meeting that is not open to the public.

(4) For purposes of Subsection (3)(b), the commission is not required to make rules to establish procedures and requirements for keeping confidential minutes and a confidential recording of:

(a) an initial hearing to the extent provided in Section 59-1-502.5; or

(b) private analysis, contemplation, and discussion by members of the commission:

(i) in performing the judicial aspects of their duties; and

(ii) consistent with state case law.

CHAPTER 216
S. B. 197
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

LOCAL HOUSING AUTHORITY AMENDMENTS

Chief Sponsor: Benjamin M. McAdams
House Sponsor: Patrice M. Arent

LONG TITLE

General Description:

This bill modifies housing authority provisions related to housing authority commissioners, minutes of their meetings, and annual reports.

Highlighted Provisions:

This bill:

- changes the term of office for a commissioner from five years to four years;
- requires a copy of a housing authority's annual report to be given to the governing body of the city or county which appointed the commissioners;
- requires each authority to post electronically for public review its annual approved budget and minutes of all open meetings held by its board of commissioners; and
- makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-606, as last amended by Laws of Utah 1999, Chapter 243
9-4-631, as renumbered and amended by Laws of Utah 1992, Chapter 241

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

Section 1. Section 9-4-606 is amended to read:

9-4-606. Commissioners -- Appointment -- Terms -- Quorum -- Meetings -- Employment of other officers and employees authorized.

(1) [~~When~~] If a housing authority is authorized to transact business and exercise powers under this part, not less than five nor more than seven persons shall be appointed as commissioners of the authority:

(a) in the case of a city, by the mayor, with the advice and consent of the governing body; or

(b) in the case of a county, by the governing body.

(2) (a) The commissioners first appointed [~~pursuant to~~] under this part shall be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment.

(b) After the first commissioners are appointed under Subsection (2)(a), commissioners [~~shall be~~] are appointed for a term of office of [~~five~~] four years.

(c) Notwithstanding Subsections (2)(a) and (b), all vacancies [~~shall be~~] are filled for the unexpired term.

(3) A commissioner [~~shall qualify~~] qualifies by taking the official oath of office [~~prescribed by general statute~~].

(4) A commissioner may not receive compensation except necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties.

(5) A commissioner [~~shall hold~~] holds office until the commissioner's successor [~~has been~~] is appointed and [~~has~~] qualified.

(6) A certificate of appointment or reappointment of [~~any~~] a commissioner shall be:

(a) filed with the authority; and

(b) conclusive evidence of the [~~due and proper~~] appointment of the commissioner.

(7) The powers of each authority [~~shall be~~] are vested in the commissioners.

(8)(a) A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies.

(b) Action may be taken by the authority upon a vote of a majority of the commissioners present, unless the bylaws of the authority require a larger number.

(9) Meetings of the commissioners of an authority may be held:

(a) anywhere within the area of operation of the authority; or

(b) within any area not described in Subsection (9)(a) in which the authority is authorized to undertake a project.

(10) The commissioners of an authority shall elect a chair and vice chair from the commissioners.

(11) An authority may employ an executive director, legal and technical experts, and other officers, agents, and employees, permanent and temporary, [~~as it may require,~~] and shall determine their qualifications, duties, and compensation.

(12) An authority may delegate to one or more of its agents or employees any powers or duties the authority considers proper.

Section 2. Section 9-4-631 is amended to read:

9-4-631. Annual report -- Budget -- Minutes.

(1) At least once a year, each authority shall file with the clerk, with a copy given to the governing body, a report of its activities for the preceding year and its approved annual budget, and make

recommendations with reference to additional legislation or other action considered necessary to carry out the purposes of this part.

(2) Each authority shall post electronically for public review its:

(a) annual approved budget; and

(b) minutes of all open meetings held by its board of commissioners.

CHAPTER 217
S. B. 198
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS

Chief Sponsor: Scott K. Jenkins
House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill creates a State Small Business Credit Initiative Program Fund to be administered by the Division of Housing and Community Development.

Highlighted Provisions:

This bill:

- creates the State Small Business Credit Initiative Program Fund;
- provides for the fund to be administered by the director of the Division of Housing and Community Development within the Department of Community and Culture;
- provides that the director may make loans and loan guarantees from the fund for the Small Business Initiative created by the federal government to use federal money for programs that leverage private money to help finance small businesses and manufacturers that are creditworthy but not receiving the loans needed to expand and create jobs;
- provides for distribution of fund money; and
- provides for an annual accounting of fund money.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
9-4-1601, Utah Code Annotated 1953
9-4-1602, Utah Code Annotated 1953
9-4-1603, Utah Code Annotated 1953

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

Section 1. Section 9-4-1601 is enacted to read:

Part 16. State Small Business Credit Initiative Program Fund

9-4-1601. Creation and administration.

(1) There is created an enterprise fund known as the "State Small Business Credit Initiative Program Fund" administered by the director of the division or the director's designee.

(2) The division is the administrator of the fund.

(3) Revenues deposited into the fund shall consist of:

(a) grants, pay backs, bonuses, entitlements, and other money received from the federal government to implement the State Small Business Credit Initiative; and

(b) transfers, grants, gifts, bequests, or any money made available from any source to implement this part.

(4) (a) The state treasurer shall invest the money in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(b) All interest or other earnings derived from the fund money shall be deposited in the fund.

(5) The division may use fund money for administration of the fund, but not to exceed 4% of the annual receipts to the fund.

Section 2. Section 9-4-1602 is enacted to read:

9-4-1602. Distribution of fund money.

(1) (a) The director shall make loans and loan guarantees from the fund for the Small Business Credit Initiative created under the federal government's Small Business Jobs Act of 2010, to use federal money for programs that leverage private lending to help finance small businesses and manufacturers that are creditworthy but not receiving the loans needed to expand and create jobs.

(b) In making loans and loan guarantees under this part, the director shall give due consideration to small businesses in underserved communities throughout the state that have been deeply impacted by recession and not seen a comparable resurgence in their economies.

(2) The director shall distribute any federal money in the fund according to the procedures, conditions, and restrictions placed upon the use of the money by the federal government.

(3) The director may, with the approval of the executive director of the department:

(a) enact rules to establish procedures for the loan and loan guarantee process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) service or contract, under Title 63G, Chapter 6, Utah Procurement Code, for the servicing of loans made by the fund.

Section 3. Section 9-4-1603 is enacted to read:

9-4-1603. Annual accounting.

(1) The director shall monitor the activities of recipients of the loans and loan guarantees issued under this part on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the director under this part.

(2) An entity receiving a loan or loan guarantee under this part shall provide the director with an annual accounting of how the money it received from the fund was spent.

(3) The director shall submit an annual report to the Workforce Services and Community and Economic Development Interim Committee before December 1 of each year:

(a) accounting for expenditures made from the fund; and

(b) evaluating the effectiveness of the loan and loan guarantee program.

CHAPTER 218
S. B. 203
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

EXECUTIVE RESIDENCE COMMISSION

Chief Sponsor: J. Stuart Adams
House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill modifies the membership and duties of the Executive Residence Commission.

Highlighted Provisions:

This bill:

- provides definitions;
- expands the membership and duties of the commission;
- requires the commission to meet at least once a year and make any recommendations to the State Building Board;
- requires the Division of Facilities Construction and Management to provide administrative support to the commission; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-1-8.1, as last amended by Laws of Utah 2010, Chapters 286 and 324

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

Section 1. Section 67-1-8.1 is amended to read:

67-1-8.1. Executive Residence Commission -- Recommendations as to use, maintenance, and operation of executive residence.

(1) The Legislature finds and declares that:

(a) the state property known as the [~~Kearns' mansion, the executive residence, is an irreplaceable historic~~] Thomas Kearns Mansion is a recognized state landmark possessing [~~special~~] historical and [~~unique~~] architectural qualities that should be preserved; and

[~~(b) the deterioration that has taken place will continue unless remedial restoration measures are undertaken.~~]

(b) the Thomas Kearns Mansion was the first building listed on the National Register of Historic Places in the state.

(2) As used in this section:

(a) "Executive residence" includes the:

(i) Thomas Kearns Mansion;

(ii) Carriage House building; and

(iii) grounds and landscaping surrounding the Thomas Kearns Mansion and the Carriage House building.

(b) "Commission" means the Executive Residence Commission established in this section.

[~~(2)~~] (3) (a) An Executive Residence Commission is established to make recommendations to the [~~Legislature for the budgeting of renovation, upkeep, historical maintenance, and restoration of the executive residence.~~] State Building Board for the use, operation, maintenance, repair, rehabilitation, alteration, restoration, placement of art and monuments, or adoptive use of the executive residence.

(b) The commission shall meet at least once a year and make any recommendations to the State Building Board prior to August 1 of each year.

[~~(b)~~] (4) The commission shall consist of [~~three~~] nine voting members and one ex officio, nonvoting member representing the Governor's Mansion Foundation. The membership shall consist of:

(a) three private citizens appointed by the governor, [~~all of whom~~] who have demonstrated an interest in historical preservation[~~.~~];

[~~(c) The commission shall also consist of one assigned representative from the Board of the Utah Arts Council, one from the Board of State History, one from the building board, an interior designer selected by the Utah chapter of ASID, and an architect selected by the Utah chapter of the AIA.~~]

(b) three additional private citizens appointed by the governor with the following background:

(i) an interior design professional with a background in historic spaces;

(ii) an architect with a background in historic preservation and restoration recommended by the Utah chapter of the American Institute of Architects; and

(iii) a landscape architect with a background and knowledge of historic properties recommended by the Utah chapter of the American Society of Landscape Architects;

(c) the director, or director's designee, of the Division of Art and Museums;

(d) the director, or director's designee, of the Division of State History; and

(e) the executive director, or executive director's designee, of the Department of Administrative Services.

[~~(3)~~] (5) (a) Except as required by Subsection [~~(3)~~] (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending on March 1.

(b) Notwithstanding the requirements of Subsection [~~(3)~~] (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that

approximately half of the commission is appointed every two years.

[~~(4)~~] (6) (a) The governor shall appoint a chair from among the membership of the commission.

(b) [~~Five~~] Six members of the commission shall constitute a quorum, and either the chair or two other members of the commission may call meetings of the commission.

[~~(5)~~] (7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

[~~(6)~~] (8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The Division of Facilities and Construction Management shall provide the administrative support to the commission.

CHAPTER 219
S. B. 204
Passed March 4, 2011
Approved March 22, 2011
Effective May 10, 2011

CAPITAL DEVELOPMENT AND IMPROVEMENT PROCESS APPROVAL REQUIREMENTS AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill amends provisions related to the capital development and improvement process.

Highlighted Provisions:

This bill:

- modifies the circumstances under which legislative approval is not required for a capital development project; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-5-104, as last amended by Laws of Utah 2010, Chapter 338

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

Section 1. Section 63A-5-104 is amended to read:

63A-5-104. Definitions -- Capital development and capital improvement process -- Approval requirements -- Limitations on new projects -- Emergencies.

(1) As used in this section:

(a) "Capital developments" means a:

(i) remodeling, site, or utility project with a total cost of $2,500,000 or more;

(ii) new facility with a construction cost of $500,000 or more; or

(iii) purchase of real property where an appropriation is requested to fund the purchase.

(b) "Capital improvements" means a:

(i) remodeling, alteration, replacement, or repair project with a total cost of less than $2,500,000;

(ii) site and utility improvement with a total cost of less than $2,500,000; or

(iii) new facility with a total construction cost of less than $500,000.

(c) (i) "New facility" means the construction of a new building on state property regardless of funding source.

(ii) "New facility" includes:

(A) an addition to an existing building; and

(B) the enclosure of space that was not previously fully enclosed.

(iii) "New facility" does not mean:

(A) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than $2,500,000; or

(B) the construction of facilities that do not fully enclose a space.

(d) "Replacement cost of existing state facilities" means the replacement cost, as determined by the Division of Risk Management, of state facilities, excluding auxiliary facilities as defined by the State Building Board.

(e) "State funds" means public money appropriated by the Legislature.

(2) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

(3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development project may not be constructed on state property without legislative approval.

(b) Legislative approval is not required for a capital development project that consists of the design or construction of a new facility if the State Building Board determines that:

(i) the requesting [~~higher education~~] state agency, commission, department, or institution has provided adequate assurance that:

(A) state funds will not be used for the design or construction of the facility; and

(B) the [~~higher education~~] state agency, commission, department, or institution has a plan for funding in place that will not require increased state funding to cover the cost of operations and maintenance to, or state funding for, immediate or future capital improvements to the resulting facility; and

(ii) the use of the state property is:

(A) appropriate and consistent with the master plan for the property; and

(B) will not create an adverse impact on the state.

(c) (i) The Division of Facilities Construction and Management shall maintain a record of facilities constructed under the exemption provided in Subsection (3)(b).

(ii) For facilities constructed under the exemption provided in Subsection (3)(b), [~~a higher~~

~~education~~] a state agency, commission, department, or institution may not request:

(A) increased state funds for operations and maintenance; or

(B) state capital improvement funding.

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds[~~;~~] that has been approved by the State Building Board;

(ii) a facility to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University;

(iii) a facility to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant money from the state, or with donated services or materials;

(iv) a capital project that:

(A) is funded by:

(I) the Uintah Basin Revitalization Fund; or

(II) the Navajo Revitalization Fund; and

(B) does not provide a new facility for a state agency or higher education institution; or

(v) a capital project on school and institutional trust lands that is funded by the School and Institutional Trust Lands Administration from the Land Grant Management Fund and that does not fund construction of a new facility for a state agency or higher education institution.

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation as a result of an exchange of real property under Section 72-5-111.

(ii) When the Department of Transportation approves those exchanges, it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built under this exemption.

(4) (a) (i) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) The list shall identify:

(A) a single project that costs more than $1,000,000;

(B) multiple projects within a single building or facility that collectively cost more than $1,000,000;

(C) a single project that will be constructed over multiple years with a yearly cost of $1,000,000 or more and an aggregate cost of more than $2,500,000;

(D) multiple projects within a single building or facility with a yearly cost of $1,000,000 or more and an aggregate cost of more than $2,500,000;

(E) a single project previously reported to the Legislature as a capital improvement project under $1,000,000 that, because of an increase in costs or scope of work, will now cost more than $1,000,000; and

(F) multiple projects within a single building or facility previously reported to the Legislature as a capital improvement project under $1,000,000 that, because of an increase in costs or scope of work, will now cost more than $1,000,000.

(b) Unless otherwise directed by the Legislature, the State Building Board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(c) In prioritizing capital improvements, the State Building Board shall consider the results of facility evaluations completed by an architect/engineer as stipulated by the building board's facilities maintenance standards.

(d) The State Building Board may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the project.

(e) The State Building Board may provide capital improvement funding to a single project, or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is $2,500,000 or more, if:

(i) the capital improvement project or multiple projects require more than one year to complete; and

(ii) the Legislature has affirmatively authorized the capital improvement project or multiple projects to be funded in phases.

(5) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

(6) (a) Except as provided in Subsection (6)(b) or (c), the Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

(b) (i) As used in this Subsection (6)(b):

(A) "Education Fund budget deficit" is as defined in Section 63J-1-312; and

(B) "General Fund budget deficit" is as defined in Section 63J-1-312.

(ii) If the Legislature determines that an Education Fund budget deficit or a General Fund budget deficit exists, the Legislature may, in

eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings.

(c) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09, 2009-10, and 2010-11 fiscal years.

(7) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The State Building Board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

(i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

(ii) the Legislature at its next annual general session.

(8) (a) The State Building Board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding.

(b) The State Building Board shall ensure that the rule:

(i) reserves funds for the Division of Facilities Construction and Management for emergency projects; and

(ii) allows the delegation of projects to some institutions and agencies with the requirement that a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.

(9) It is the intent of the Legislature that in funding capital improvement requirements under this section the General Fund be considered as a funding source for at least half of those costs.

CHAPTER 220
S. B. 206
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

LABOR ORGANIZATION PROVISIONS IN TEACHER CONTRACTS

Chief Sponsor: Howard A. Stephenson
House Sponsor: Holly J. Richardson

LONG TITLE

General Description:

This bill modifies provisions of Title 34, Chapter 32, Deductions for the Benefit of Labor Organizations, relating to the cessation or commencement of a union dues wage deduction.

Highlighted Provisions:

This bill:

- requires that an employer promptly cease or commence a union dues wage deduction upon the written request of the employee;
- states that an employee's request to cease a union dues wage deduction may not be conditioned on the labor organization's advance notice or consent;
- states that a labor organization is not liable to an employee for any claim, service, or benefit that is available only to a member of the organization if the employee requests cessation of union dues wage deductions;
- states that the rights described in this bill cannot be waived; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-32-1, as last amended by Laws of Utah 2004, Chapter 220

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

Section 1. Section 34-32-1 is amended to read:

34-32-1. Assignments to labor unions -- Effect.

(1) As used in this section:

(a) "Employee" means a person employed by any person, partnership, public, private, or municipal corporation, school district, the state, or any political subdivision of the state.

(b) "Employer" means the person or entity employing an employee.

(c) (i) "Labor organization" means a lawful organization of any kind that is composed, in whole or in part, of employees, and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

(ii) Except as provided in Subsection (1)(c)(iii), "labor organization" includes each employee association and union for employees of public and private sector employers.

(iii) "Labor organization" does not include organizations governed by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. or the Railroad Labor Act, 45 U.S.C. Sec. 151 et seq.

(d) "Union dues" means dues, fees, money, or other assessments required as a condition of membership or participation in a labor organization.

(2) [~~(a)~~] An employee may direct an employer, in writing, [~~that an employer~~] to deduct from the employee's wages a specified sum for union dues, not to exceed 3% per month, to be paid to a labor organization designated by the employee.

[~~(b)~~] (3) An employer shall promptly commence or cease making deductions for union dues from the wages of an employee for the benefit of a labor organization when the employer receives a written communication from the employee directing [~~that the deductions cease.~~] the employer to commence or cease making deductions.

(4) An employee's request that an employer cease making deductions may not be conditioned upon a labor organization's:

(a) receipt of advance notice of the request; or

(b) prior consent to cessation of the deductions.

(5) A labor organization is not liable for any claim, service, or benefit that is:

(a) available only to a member of the labor organization; and

(b) terminated as a result of an employee's request that the employer cease making deductions for union dues.

(6) An employee may join a labor organization or terminate membership at any time. A person may not place a restriction on the time that an employee may join, or terminate membership with, a labor organization.

(7) An employee may not waive a provision of this section.

CHAPTER 221
S. B. 210
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill modifies the Utah Postsecondary Proprietary School Act.

Highlighted Provisions:

This bill:

- modifies definitions;
- modifies institutions that are exempt from the act;
- provides for the Division of Consumer Protection to issue certificates of exemption to specified institutions and establishes a process for issuing an exemption certificate and renewals;
- modifies the division's authority with respect to complaints against institutions subject to the act;
- requires institutions to file separate registration and exempt applications for each campus that the institution operates;
- requires a proprietary school to submit a review of its continued qualification for certification;
- specifies information that a proprietary school is required to submit to demonstrate that it is financially sound;
- modifies a provision relating to division inspections of a proprietary school;
- modifies a provision relating to criminal background checks that the division may require;
- authorizes the division to establish a process for dealing with complaints concerning postsecondary educational institutions; and
- establishes a process for the division to confirm that an institution is a private nonprofit educational institution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-34-103, as enacted by Laws of Utah 2002, Chapter 222
13-34-105, as last amended by Laws of Utah 2010, Chapters 218 and 378
13-34-106, as last amended by Laws of Utah 2005, Chapter 242
13-34-107, as last amended by Laws of Utah 2010, Chapters 278 and 378
13-34-108, as last amended by Laws of Utah 2005, Chapter 242
13-34-110, as enacted by Laws of Utah 2002, Chapter 222
13-34-113, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

13-34-107.5, Utah Code Annotated 1953
13-34-107.6, Utah Code Annotated 1953

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

Section 1. Section 13-34-103 is amended to read:

13-34-103. Definitions.

As used in this chapter:

(1) "Agent" means any person who owns an interest in or is employed by a proprietary school and who:

(a) enrolls or attempts to enroll a resident of this state in a proprietary school;

(b) offers to award educational credentials for remuneration on behalf of a proprietary school; or

(c) holds himself out to residents of this state as representing a proprietary school for any purpose.

(2) "Certificate of registration" means approval of the division to operate a school or institution in compliance with this chapter and rules adopted under this chapter. The registration is not an endorsement of the school or institution by either the division or the state [~~of Utah~~].

(3) "Division" means the Division of Consumer Protection.

(4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify or appear to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for any educational program.

(5) "Institution" means an individual, corporation, partnership, association, cooperative, or other legal entity.

(6) "Offer" means to advertise, publicize, solicit, or encourage any person directly or indirectly.

(7) "Operate" in this state means to [~~have a significant presence within~~]:

(a) maintain a place of business in the state[~~, to~~];

(b) solicit business in the state;

(c) conduct significant educational activities within the state[~~,~~]; or [~~to~~]

(d) offer or provide postsecondary instruction leading to a postsecondary degree or certificate to any number of Utah residents [~~assembled at a receiving site in Utah~~] from a location outside the state by correspondence or any telecommunications or electronic media technology.

(8) "Ownership" means the controlling interest in a school, institution, or college. If the school, institution, or college is owned or controlled by

other than a natural person, "ownership" refers to the controlling interest in the legal entity which controls the school, institution, or college.

(9) "Postsecondary education" means education or educational services offered primarily to persons who have completed or terminated their secondary or high school education or who are beyond the age of compulsory school attendance.

(10) "Proprietary school" means any private institution, including business, modeling, paramedical, tax preparation, or trade [~~and~~] or technical [~~schools, which~~] school, other than a school exempted under this chapter, that offers postsecondary education:

(a) in consideration of the payment of tuition or fees; and

(b) for the attainment of educational, professional, or vocational objectives[~~, other than those schools exempted under this chapter~~].

(11) "Rules" means those rules adopted by the division under the Utah Administrative Rulemaking Act necessary to enforce and administer this chapter.

(12) "Utah [~~school or~~] institution" means a postsecondary educational school or institution whose headquarters or primary operations are in Utah.

Section 2. Section 13-34-105 is amended to read:

13-34-105. Exempted institutions.

(1) This chapter does not apply to [~~the following institutions~~]:

(a) a Utah institution directly supported, to a substantial degree, with funds provided by:

(i) the state;

(ii) a local school district; or

(iii) other Utah governmental subdivision;

(b) an institution that offers instruction exclusively at or below the 12th grade level;

(c) a lawful enterprise that offers only professional review programs, such as C.P.A. and bar examination review and preparation courses;

(d) a private, postsecondary educational institution that is owned, controlled, operated, or maintained by a bona fide church or religious denomination, which is exempted from property taxation under the laws of this state;

(e) subject to Subsection (3) and Section 13-34-107.5, a school or institution that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(f) subject to Subsection (4), a business organization, trade or professional association, fraternal society, or labor union that:

(i) sponsors or conducts courses of instruction or study predominantly for bona fide employees or members; and

(ii) does not, in advertising, describe itself as a school;

(g) an institution that:

(i) (A) exclusively offers general education courses or instruction solely remedial, avocational, nonvocational, or recreational in nature[~~, that~~]; and

(B) does not[~~: (i)~~] advertise occupation objectives[~~;~~] or [~~(ii)~~] grant educational credentials; or

(ii) exclusively prepares individuals to teach courses or instruction described in Subsection (1)(g)(i)(A);

(h) an institution that offers only workshops or seminars:

(i) lasting no longer than three calendar days; and

(ii) for which academic credit is not awarded;

(i) an institution that offers programs:

(i) in barbering, cosmetology, real estate, or insurance; and

(ii) that are regulated and approved by a state or federal governmental agency;

(j) an education provider certified by the Division of Real Estate under Section 61-2c-204.1;

(k) an institution that offers aviation training if the institution:

(i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or

(B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61; and

(ii) exclusively offers aviation training that a student fully receives within 24 hours after the student pays any tuition, fee, or other charge for the aviation training; [~~and~~]

(l) an institution that provides emergency medical services training if all of the institution's instructors, course coordinators, and courses are approved by the Department of Health[~~.~~];

(m) an institution that exclusively conducts nurse aide training programs that are approved by the State Office of Vocational Education and are subject to the Nurse Aide Registry; and

(n) a private, nonprofit educational institution that has been in continuous operation for at least 20 years, except as provided in Subsection (5), Subsection 13-34-106(8) and Section 13-34-107.6.

(2) [~~(a)~~] If available evidence suggests that an exempt institution under this section is not in compliance with the standards of registration under this chapter and applicable division rules, the division shall contact the institution and, if appropriate, the state or federal government agency to request corrective action.

[~~(b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).~~]

(3) An institution, branch, extension, or facility operating within the state that is affiliated with an institution operating in another state shall be separately approved by the affiliate's regional or national accrediting agency to qualify for the exemption described in Subsection (1)(e).

(4) For purposes of Subsection (1)(f), a business organization, trade or professional association, fraternal society, or labor union is considered to be conducting the course predominantly for bona fide employees or members if it hires a majority of the persons who:

(a) successfully complete its course of instruction or study with a reasonable degree of proficiency; and

(b) apply for employment with that same entity.

(5) An institution subject to, or expressly exempted from any part of, this chapter is:

(a) established as an educational institution within the state;

(b) independent of the state system of higher education;

(c) subject to compliance with the applicable provisions of this chapter; and

(d) authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

Section 3. Section 13-34-106 is amended to read:

13-34-106. Responsibilities of division.

The division is responsible for the administration of this chapter, and shall do the following:

(1) prescribe the contents of the registration statements required by this chapter relating to the quality of education and ethical and business practices;

(2) issue:

(a) certification of registration upon receipt and approval of the registration statement required under Section 13-34-107; and

(b) a certificate of exemption under Section 13-34-107.5 upon receipt and approval of an application and verification that the requirements of Subsection 13-34-105(1)(e) and Section 13-34-107.5 are met;

(3) receive, investigate, and make available for public inspection the registration statements filed by proprietary schools operating or intending to operate in the state;

(4) maintain and publicize a list of proprietary schools for which a registration statement is on file with the division;

(5) [~~investigate and audit,~~] on the division's own initiative or in response to a complaint filed with the division, do any of the following with respect to any institution subject to, or reasonably believed by the division to be subject to, this chapter[~~;~~]:

(a) investigate;

(b) audit;

(c) review;

(d) appropriately act, including enforcing this chapter or any other law enforced by the division; and

(e) refer a matter to:

(i) another governmental entity; or

(ii) the institution's accrediting body, if the institution is an exempt institution under Section 13-34-107.5;

(6) negotiate and enter into interstate reciprocity agreements with other states, if in the judgment of the division, the agreements are or will help to effectuate the purposes of this chapter; [~~and~~]

(7) consent to the use of educational terms in business names in accordance with Section 13-34-114[~~.~~]; and

(8) establish and maintain a process for reviewing and appropriately acting on complaints concerning postsecondary educational institutions operating in the state, including enforcing applicable state laws.

Section 4. Section 13-34-107 is amended to read:

13-34-107. Advertising, recruiting, or operating a proprietary school -- Required registration statement or exemption -- Certificate of registration -- Registration does not constitute endorsement.

(1) (a) Unless an institution complies with Subsection (1)(b), the institution may not do any of the following in this state:

(i) advertise a proprietary school;

(ii) recruit students for a proprietary school; or

(iii) operate a proprietary school.

(b) An institution may not engage in an activity described in Subsection (1)(a) unless the institution:

(i) (A) files with the division a registration statement relating to the proprietary school that is in compliance with:

(I) applicable rules made by the division; and

(II) the requirements set forth in this chapter; and

(B) obtains a certificate of registration; or

(ii) establishes an exemption with the division.

(c) (i) Except as provided in Subsection (1)(c)(ii), an institution that files a registration statement under this section shall file a separate registration statement and pay a separate fee for each physical campus that the institution operates as a proprietary school.

(ii) An institution that registered with the division before May 10, 2011 is not required to comply with Subsection (1)(c)(i) until the institution's next regular renewal date.

(2) (a) The registration statement or exemption described in Subsection (1) shall be:

(i) verified by the oath or affirmation of the owner or a responsible officer of the proprietary school filing the registration statement or exemption; and

(ii) include a certification as to whether any of the following has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

(A) the proprietary school; or

(B) any of the following with respect to the proprietary school:

(I) an owner;

(II) an officer;

(III) a director;

(IV) an administrator;

(V) a faculty member;

(VI) a staff member; or

(VII) an agent.

(b) The proprietary school shall:

(i) make available, upon request, a copy of the registration statement, showing the date upon which it was filed; and

(ii) display the certificate of registration obtained from the division in a conspicuous place on the proprietary school's premises.

(3) (a) A registration statement and the accompanying certificate of registration are not transferable.

(b) In the event of a change in ownership or in the governing body of the proprietary school, the new owner or governing body, within 30 days after the change, shall file a new registration statement.

(4) (a) Except as provided in Subsection (3)(b), a registration statement or a renewal statement and the accompanying certificate of registration are effective for a period of two years after the date of filing and issuance.

(b) No later than one year after the issuance or renewal of a certificate of registration to a proprietary school, the proprietary school shall:

(i) submit a review of the proprietary school's continued qualification for a certificate of registration, on a form approved by the division; and

(ii) pay a fee established under this section and Section 63J-1-504.

(5) (a) The division shall establish a graduated fee structure for the filing of registration statements by various classifications of institutions pursuant to Section 63J-1-504.

(b) Fees are not refundable.

(c) Fees shall be deposited in the Commerce Service Account created by Section 13-1-2.

(6) (a) Each proprietary school shall:

(i) demonstrate fiscal responsibility at the time the proprietary school files its registration statement as prescribed by rules of the division; and

(ii) as provided in Subsection (6)(b), provide evidence to the division that the proprietary school:

(A) is financially sound; and

(B) can reasonably fulfill commitments to and obligations the proprietary school has incurred with students and creditors.

[~~(b) A proprietary school applying for an initial certificate of registration to operate shall prepare and submit financial statements and supporting documentation as requested by the division.~~]

[~~(c) A proprietary school applying for renewal of a certificate of registration to operate or renewal under new ownership shall provide audited financial statements.~~]

(b) The evidence that a propriety school is required to provide under Subsection (6)(a)(ii) includes:

(i) for a proprietary school that has not operated long enough to complete a fiscal year:

(A) pro forma financial statements until the information described in Subsection (6)(b)(ii) is available; and

(B) a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school; and

(ii) for a proprietary school that has completed a fiscal year or as soon as a proprietary school completes its first fiscal year:

(A) a current financial statement, with all applicable footnotes, for the most recent fiscal year, including a balance sheet, a statement of income, a statement of retained earnings, and a statement of cash flow; and

(B) a certified fiscal audit of the proprietary school's financial statement, performed by a certified or licensed public accountant, or a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school.

(c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6), the division may consider:

(i) any judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to creditors;

(ii) documentation showing the resolution of any matter listed in Subsection (6)(c)(i);

(iii) the proprietary school's explanation for any of the matters listed in Subsection (6)(c)(i);

(iv) any guarantee agreement provided for the proprietary school; and

(v) any history of a prior entity that:

(A) is owned or operated by any individual with an ownership interest in the proprietary school; and

(B) has failed to maintain fiscal responsibility.

(d) The division may require evidence of financial status at other times when it is in the best interest of students to require such information.

(7) (a) A proprietary school applying for an initial certificate of registration or seeking renewal shall provide in a form approved by the division:

(i) a surety bond;

(ii) a certificate of deposit; or

(iii) an irrevocable letter of credit.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing for:

(i) the amount of the bond, certificate, or letter of credit required under Subsection (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary school during a school year;

(ii) the execution of the bond, certificate, or letter of credit;

(iii) cancellation of the bond, certificate, or letter of credit during or at the end of the registration term; and

(iv) any other matters related to providing the bond, certificate, or letter of credit required under Subsection (7)(a).

(c) The bond, certificate, or letter of credit shall be used as a protection against loss of advanced tuition, book fees, supply fees, or equipment fees:

(i) collected by the proprietary school from a student or a student's parent, guardian, or sponsor prior to the completion of the program or courses for which it was collected; or

(ii) for which the student is liable.

(8) (a) Except as provided in Section 13-34-113, the division may not refuse acceptance of a registration statement that is:

(i) tendered for filing and, based on a preliminary review, appears to be in compliance with Subsections (1), (2), and (6); and

(ii) accompanied by:

(A) the required fee; and

(B) one of the following required by Subsection (7):

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(b) A certificate of registration is effective upon the date of issuance.

(c) The responsibility of compliance is upon the proprietary school and not upon the division.

(d) (i) If it appears to the division that a registration statement on file may not be in compliance with this chapter, the division may advise the proprietary school as to the apparent deficiencies.

(ii) After a proprietary school has been notified of a deficiency under Subsection (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school, accompanied by:

(A) the required fee; and

(B) one of the following required by Subsection (7):

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(9) The following does not constitute and may not be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state:

(a) an acceptance of:

(i) a registration statement;

(ii) a renewal statement; or

(iii) an amended registration statement; and

(b) issuance of a certificate of registration.

Section 5. Section 13-34-107.5 is enacted to read:

13-34-107.5. Exemption certificate -- Application and renewal process.

(1) As used in this section:

(a) "Exemption certificate" means an accredited institution certificate of exemption that complies with:

(i) applicable rules made by the division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) this section.

(b) "Exempt institution" means an institution that is exempt from this chapter under Subsection 13-34-105(1)(e) but required under 34 C.F.R. 600.9 to be legally authorized by a state.

(2) (a) An institution wishing to be acknowledged as an exempt institution shall:

(i) file with the division an application for an exemption certificate; and

(ii) pay the division a fee established by the division.

(b) An institution filing an application for an exemption certificate shall file a separate application and pay a separate fee for each physical campus that the institution operates.

(3) An application under Subsection (2) shall:

(a) be on a form approved by the division;

(b) include proof of current accreditation from a regional or national accrediting agency recognized by the United States Department of Education;

(c) include an identical copy of each financial statement the institution provides to its accrediting agency;

(d) be verified by the oath or affirmation of the owner or a responsible officer of the institution filing the application; and

(e) include a certification as to whether the institution or an owner, officer, director, or administrator of the institution has violated a law, federal regulation, or state rule as determined in a criminal, civil, or administrative proceeding.

(4) (a) An exemption certificate is not transferrable.

(b) If there is a change, as defined by the United States Department of Education, in the ownership or the governing body of an institution that, before the change, is an exempt institution, the institution shall file a new application under Subsection (2) within 30 days after the change.

(5) (a) Except as provided in Subsections (4)(b) and (5)(b), an exemption certificate is effective for two years after its issuance.

(b) For an exemption certificate that the division issues pursuant to an application the division receives during 2011, the division may extend the period for which the exemption certificate is effective by up to 11 months in order to ensure that renewal dates are appropriately staggered to allow the division to manage resources and work load.

(6) No later than one year after the division's issuance or renewal of an exemption certificate to an institution, the institution shall:

(a) submit a review, on a form approved by the division, of the institution's continued qualification for an exemption certificate; and

(b) pay a fee that the division establishes under this section and Section 63J-1-504.

(7) (a) The division shall, as provided in Section 63J-1-504, establish a graduated fee structure for the filing of an application for an exemption certificate under this section based on various classifications of institutions seeking to be an exempt institution.

(b) A fee paid under this section is not refundable.

(c) Fees paid under this section shall be deposited in the Commerce Service Account created in Section 13-1-2.

(8) Except as provided in Section 13-34-113, the division may not refuse acceptance of an application under Subsection (2) that:

(a) is tendered for filing and, based on the division's preliminary review, appears to comply with this section; and

(b) is accompanied by the required fee.

(9) (a) An exemption certificate is effective on the date it is issued.

(b) The responsibility for compliance with the requirements for issuance of an exemption certificate is upon the institution and not upon the division.

(10) (a) If it appears to the division that an institution is not in compliance with requirements to qualify for an exemption certificate, the division may advise the institution as to the apparent deficiencies.

(b) After receiving notification from the division under Subsection (10)(a), an institution may file a new or amended application for an exemption certificate, accompanied by the required fee.

(11) A person may not represent that the division's acceptance of any application for an exemption certificate under this section or the division's issuance of an exemption certificate constitutes an endorsement or approval of the institution by the division or the state.

Section 6. Section 13-34-107.6 is enacted to read:

13-34-107.6. Confirmation of private nonprofit educational institution -- Effect of confirmation -- Fees.

(1) Upon the request of an institution proving to the reasonable satisfaction of the division that the institution is an institution described in Subsection 13-34-105(1)(n), the division shall issue a written finding and confirmation to the institution confirming that it is an institution described in Subsection 13-34-105(1)(n).

(2) A written finding and confirmation under Subsection (1) has the effect of establishing the institution by name as an educational institution by the state by action issued by a state agency, as contemplated in 34 C.F.R. Section 600.9(a)(1)(i)(a).

(3) (a) The division shall establish a fee, not to exceed $1,500, for processing a request and issuing a written finding and confirmation as provided in Subsection (1).

(b) Fees paid under this section shall be deposited in the Commerce Service Account created in Section 13-1-2.

(c) A fee paid under this section is not refundable.

Section 7. Section 13-34-108 is amended to read:

13-34-108. Information required to be available -- Documents to be fair and accurate -- Fair and ethical practices.

(1) It is a violation of this chapter for any institution or proprietary school, which is required to file a registration statement under this chapter, to offer postsecondary education in this state unless:

(a) the institution or proprietary school makes available:

(i) in writing;

(ii) to all applicants;

(iii) prior to:

(A) enrollment of the applicant; or

(B) the receipt of any tuition by the institution or proprietary school; and

(iv) information that includes the following:

(A) the proprietary school name, which shall be representative of the programs offered at the proprietary school;

(B) the address of the proprietary school;

(C) the location of the proprietary school;

(D) the facilities, faculty, training equipment, and instructional programs of the proprietary school;

(E) enrollment qualifications;

(F) accurate information regarding the relationship of the program of the institution or proprietary school to state licensure requirements for practicing a related occupation and profession in Utah;

(G) tuition, fees, and other charges and expenses;

(H) financial assistance, cancellation, and tuition refund policies, including the posting of:

(I) a surety bond;

(II) a certificate of credit; or

(III) an irrevocable letter of credit;

(I) length of programs;

(J) graduation requirements;

(K) subject to Subsection (2), for each of the immediately preceding three years:

(I) graduation rates; and

(II) employment rates; and

(L) awarding of appropriate educational credentials to indicate satisfactory course completions;

(b) all recruiting documents, advertising, solicitations, publicity releases, and other public statements regarding the proprietary school are fair and accurate;

(c) all agents or sales representatives of the proprietary school are required by the proprietary school to comply with ethical practices prescribed by the division; and

(d) the institution or proprietary school makes available to the division for inspection during normal business hours, whether or not the inspection is scheduled or announced, all records relevant to:

(i) the operation of the institution or proprietary school; and

(ii) the efforts of the institution or proprietary school to comply with this chapter.

(2) (a) Beginning on May 2, 2005, an institution or proprietary school shall collect and maintain the information necessary to comply with Subsection (1)(a)(iv)(K).

(b) Prior to May 2, 2008, if an institution or proprietary school has the information described in Subsection (1)(a)(iv)(K) for a time period of three years or less, the institution or proprietary school shall provide the information for the time period the institution or proprietary school has the information.

Section 8. Section 13-34-110 is amended to read:

13-34-110. Enforcement of contracts or agreements -- Rescission based on defective registration statement.

(1) A proprietary school shall be unable to enforce in the courts of this state any contract or agreement relating to postsecondary education services in this state unless, at the time the contract or agreement was entered into, an effective registration statement was on file with the division and made accessible to every applicant at the time of admission to the school.

(2) It is a violation of this chapter if a proprietary school or its agent:

(a) fails to file an effective registration statement;

(b) willfully omits from a registration statement provided under Section 13-34-107 or an application under Section 13-34-107.5 for an exemption certificate any material statement of fact required by this chapter and applicable regulations; or

(c) includes in a registration statement any material statement of fact that was known, or should have been known, to the proprietary school to be false, deceptive, inaccurate, or misleading.

(3) A student who enrolled in a proprietary school, in reliance upon the school's registration statement, may rescind the contract or agreement of enrollment and obtain a refund from the school of all tuition, fees, and other charges paid to the school if the school or its agent committed a violation under Subsection (2).

(4) A violation of this chapter is also a violation of Section 13-11-4.

Section 9. Section 13-34-113 is amended to read:

13-34-113. Denial, suspension, or revocation of a certificate of registration or exemption certificate -- Limitations.

(1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate proceedings to deny, suspend, or revoke a certificate of registration to operate a proprietary school under this chapter or an exemption certificate under Section 13-34-107.5 if:

(a) the division finds that the order is in the public interest; and

(b) (i) the registration statement [~~or~~], renewal statement, or application for an exemption certificate is incomplete, false, or misleading in any respect;

(ii) the division determines that the educational credential associated with the proprietary school or accredited institution represents the undertaking or completion of educational achievement that has not been undertaken and earned; or

(iii) the proprietary school [~~or~~], accredited institution, or an individual described in Subsection 13-34-107(2)(a)(ii)(B) has:

(A) violated any provision of:

(I) this chapter;

(II) the rules made by the division pursuant to this chapter; or

(III) a commitment made in a registration statement for a certificate of registration to operate the proprietary school or in an application for an exemption certificate;

(B) caused or allowed to occur a violation of any provision of:

(I) this chapter;

(II) the rules made by the division pursuant to this chapter; or

(III) a commitment made in a registration statement for a certificate of registration to operate the proprietary school;

(C) been enjoined by any court, or is the subject of an administrative or judicial order issued in this or another state, if the injunction or order:

(I) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or

(II) was based on a finding of lack of integrity, truthfulness, or mental competence;

(D) been convicted of a crime involving moral turpitude;

(E) obtained or attempted to obtain a certificate of registration under this chapter by misrepresentation;

(F) failed to timely file with the division any report required by:

(I) this chapter; or

(II) rules made by the division pursuant to this chapter;

(G) failed to furnish information requested by the division; or

(H) failed to pay an administrative fine imposed by the division in accordance with this chapter.

(2) Division staff may place reasonable limits upon a proprietary school's continued certificate of registration to operate if:

(a) there are serious concerns about the proprietary school's ability to provide the training in the manner approved by the division; and

(b) limitation is warranted to protect the students' interests.

(3) (a) The division may:

[~~(a)~~] (i) conduct a criminal background check on an individual described in Subsection 13-34-107(2)(a)(ii)(B); and

[~~(b)~~] (ii) require a proprietary school to provide to the division any information and to cover any costs necessary to conduct a criminal background check on an individual described in Subsection 13-34-107(2)(a)(ii)(B)[~~.~~](I) through (IV), including:

(A) a fingerprint card in a form acceptable to the division;

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation;

(C) the cost of a criminal background check; and

(D) the cost of fingerprinting.

(b) Money paid to the division for the cost of a criminal background check is nonlapsing.

CHAPTER 222
S. B. 220
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

INTERMOUNTAIN WEATHERIZATION TRAINING FUND

Chief Sponsor: Scott K. Jenkins
House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill creates the Intermountain Weatherization Training Fund.

Highlighted Provisions:

This bill:

- creates the Intermountain Weatherization Training Fund;
- provides for the fund to be administered by the Division of Housing and Community Development within the Department of Community and Culture;
- identifies revenue sources for the fund; and
- provides that fund money shall be used to administer, operate, maintain, and support the Intermountain Weatherization Training Center.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

9-4-1701, Utah Code Annotated 1953

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

Section 1. Section 9-4-1701 is enacted to read:

Part 17. Intermountain Weatherization Training Fund

9-4-1701. Creation and administration.

(1) There is created a restricted special revenue fund known as the "Intermountain Weatherization Training Fund."

(2) The Intermountain Weatherization Training Fund shall consist of:

(a) private contributions;

(b) donations or grants from public or private entities;

(c) fees;

(d) any money appropriated by the Legislature; and

(e) interest and earnings on fund money.

(3) The division shall authorize the expenditure of fund money to the Weatherization Training Center for the administration, operation, maintenance, and support of the center subject to:

(a) money available in the fund; and

(b) rules established under Subsection (5).

(4) Administrative costs of the Intermountain Weatherization Fund shall be paid from the fund.

(5) The division shall:

(a) administer the money deposited in the Intermountain Weatherization Training Fund;

(b) distribute the money in the Intermountain Weatherization Training Fund in accordance with Subsection (5)(c); and

(c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(i) the procedures for awarding fund money; and

(ii) the procedure for the Weatherization Training Center to apply for money from the Intermountain Weatherization Training Fund.

CHAPTER 223
S. B. 222
Passed March 8, 2011
Approved March 22, 2011
Effective May 10, 2011

PUBLIC TRANSIT AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Christopher N. Herrod

LONG TITLE

General Description:

This bill amends provisions relating to public transit.

Highlighted Provisions:

This bill:

- authorizes a local district that provides transportation services to adopt a resolution approving the annexation of the area outside of the local district's boundaries if:
  - the area is within a county that has levied a certain local option sales and use tax; and
  - the county legislative body has adopted a resolution approving the annexation of the areas outside of the local district;
- repeals certain public transit district conflict of interest provisions and clarifies that each trustee, officer, and employee of a public transit district is subject to the Utah Public Officers' and Employees' Ethics Act;
- provides that a county, city, or town legislative body is not required to submit an opinion question to the county's, city's, or town's registered voters to impose a certain sales and use tax to fund public transit if the county, city, or town imposes a certain sales and use tax on or before July 1, 2011; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-415, as last amended by Laws of Utah 2009, Chapter 350
17B-2a-804, as last amended by Laws of Utah 2010, Chapter 281
17B-2a-814, as renumbered and amended by Laws of Utah 2007, Chapter 329
59-12-2213, as enacted by Laws of Utah 2010, Chapter 263

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

Section 1. Section 17B-1-415 is amended to read:

17B-1-415. Annexation of wholesale district through expansion of retail provider -- Annexation of a local district that provides transportation services.

(1) (a) A local district that provides a wholesale service may adopt a resolution approving the annexation of an area outside the local district's boundaries if:

(i) the area is annexed by or otherwise added to, or is added to the retail service area of, a municipality or another local district that:

(A) acquires the wholesale service from the local district and provides it as a retail service;

(B) is, before the annexation or other addition, located at least partly within the local district; and

(C) after the annexation or other addition will provide to the annexed or added area the same retail service that the local district provides as a wholesale service to the municipality or other local district; and

(ii) except as provided in Subsection (2), no part of the area is within the boundaries of another local district that provides the same wholesale service as the proposed annexing local district.

(b) For purposes of this section:

(i) a local district providing public transportation service shall be considered to be providing a wholesale service; and

(ii) a municipality included within the boundaries of the local district providing public transportation service shall be considered to be acquiring that wholesale service from the local district and providing it as a retail service and to be providing that retail service after the annexation or other addition to the annexed or added area, even though the municipality does not in fact provide that service.

(2) Notwithstanding Subsection (1)(a)(ii), an area outside the boundaries of a local district providing a wholesale service and located partly or entirely within the boundaries of another local district that provides the same wholesale service may be annexed to the local district if:

(a) the conditions under Subsection (1)(a)(i) are present; and

(b) the proposed annexing local district and the other local district follow the same procedure as is required for a boundary adjustment under Section 17B-1-417, including both district boards adopting a resolution approving the annexation of the area to the proposed annexing local district and the withdrawal of that area from the other district.

(3) A local district that provides transportation services may adopt a resolution approving the annexation of the area outside of the local district's boundaries if:

(a) the area is within a county that has levied a sales and use tax under Section 59-12-2216; and

(b) the county legislative body has adopted a resolution approving the annexation of the areas outside of the local district.

[~~(3)~~] (4) Upon the adoption of an annexation resolution under this section, the board of the annexing local district shall comply with the requirements of Subsection 17B-1-414(2), and the

lieutenant governor shall issue a certificate of annexation and send a copy of notice as provided in Section 67-1a-6.5.

[~~(4)~~] (5) Subsections 17B-1-414(2) and (3) apply to an annexation under this section.

Section 2. Section 17B-2a-804 is amended to read:

17B-2a-804. Additional public transit district powers.

(1) In addition to the powers conferred on a public transit district under Section 17B-1-103, a public transit district may:

(a) provide a public transit system for the transportation of passengers and their incidental baggage;

(b) notwithstanding Subsection 17B-1-103(2)(g) and subject to Section 17B-2a-817, levy and collect property taxes only for the purpose of paying:

(i) principal and interest of bonded indebtedness of the public transit district; or

(ii) a final judgment against the public transit district if:

(A) the amount of the judgment exceeds the amount of any collectable insurance or indemnity policy; and

(B) the district is required by a final court order to levy a tax to pay the judgment;

(c) insure against:

(i) loss of revenues from damage to or destruction of some or all of a public transit system from any cause;

(ii) public liability;

(iii) property damage; or

(iv) any other type of event, act, or omission;

(d) acquire, contract for, lease, construct, own, operate, control, or use:

(i) a right-of-way, rail line, monorail, bus line, station, platform, switchyard, terminal, parking lot, or any other facility necessary or convenient for public transit service; or

(ii) any structure necessary for access by persons and vehicles;

(e) (i) hire, lease, or contract for the supplying or management of a facility, operation, equipment, service, employee, or management staff of an operator; and

(ii) provide for a sublease or subcontract by the operator upon terms that are in the public interest;

(f) operate feeder bus lines and other feeder or ridesharing services as necessary;

(g) accept a grant, contribution, or loan, directly through the sale of securities or equipment trust certificates or otherwise, from the United States, or from a department, instrumentality, or agency of the United States, to:

(i) establish, finance, participate as a limited partner or member in a development with limited liabilities in accordance with Subsection (1)(l), construct, improve, maintain, or operate transit facilities, equipment, and transit-oriented developments or transit-supportive developments; or

(ii) study and plan transit facilities in accordance with any legislation passed by Congress;

(h) cooperate with and enter into an agreement with the state or an agency of the state to establish transit facilities and equipment or to study or plan transit facilities;

(i) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

(j) from bond proceeds or any other available funds, reimburse the state or an agency of the state for an advance or contribution from the state or state agency;

(k) do anything necessary to avail itself of any aid, assistance, or cooperation available under federal law, including complying with labor standards and making arrangements for employees required by the United States or a department, instrumentality, or agency of the United States; and

(l) subject to the restriction in Subsection (2), assist in a transit-oriented development or a transit-supportive development in connection with the economic development of areas in proximity to a right-of-way, rail line, station, platform, switchyard, terminal, or parking lot, by:

(i) investing in a project as a limited partner or a member, with limited liabilities; or

(ii) subordinating an ownership interest in real property owned by the public transit district.

(2) (a) A public transit district may only assist in the economic development of areas under Subsection (1)(l):

(i) in the manner described in Subsection (1)(l)(i) or (ii); and

(ii) on no more than five transit-oriented developments or transit-supportive developments selected by the board of trustees.

(b) A public transit district may not invest in a transit-oriented development or transit-supportive development as a limited partner or other limited liability entity under the provisions of Subsection (1)(l)(i), unless the partners, developer, or other investor in the entity, makes an equity contribution equal to no less than 25% of the appraised value of the property to be contributed by the public transit district.

(c) A current board member of a public transit district to which the board member is appointed may not have any interest in the transactions engaged in by the public transit district pursuant to

Subsection (1)(l)(i) or (ii), except as may be required by the board member's fiduciary duty as a board member.

(3) A public transit district may be funded from any combination of federal, state, or local funds.

(4) A public transit district may not acquire property by eminent domain.

Section 3. Section 17B-2a-814 is amended to read:

17B-2a-814. Public transit district trustees, officers, and employees subject to Utah Public Officers' and Employees' Ethics Act.

[~~(1) As used in this section, "relative" means a parent, spouse, child, grandparent, grandchild, great grandparent, great grandchild, or sibling of a trustee, officer, or employee.~~]

[~~(2) Except as provided in this section, a trustee, officer, or employee of a public transit district may not be interested in any manner, directly or indirectly, in a contract or in the profits derived from a contract:~~]

[~~(a) awarded by the board of trustees; or~~]

[~~(b) made by an officer or employee pursuant to discretionary authority vested in the officer or employee.~~]

[~~(3) Notwithstanding Subsection (2), if a trustee, officer, or employee of a public transit district is a stockholder, bondholder, director, or other officer or employee of a corporation contracting with the district, the district may contract with that corporation for its general benefit unless the trustee, officer, or employee of the district owns or controls, directly or indirectly, stock or bonds in an amount greater than 5% of the total amount of outstanding stock or bonds.~~]

[~~(4) (a) (i) A trustee, officer, or employee of a public transit district who has, or whose relative has, a substantial interest in a contract with, sale to, purchase from, or service to the district shall disclose that interest to the board of trustees of the district in a public meeting of the board.~~]

[~~(ii) The board of trustees of the district shall disclose that interest in the minutes of its meeting.~~]

[~~(b) A trustee, officer, or employee of a public transit district who has, or whose relative has, a substantial interest in a contract with, sale to, purchase from, or service to the district may not vote upon or otherwise participate in any manner as a trustee, officer, or employee in the contract, sale, purchase, or service.~~]

[~~(5) A trustee, officer, or employee of a public transit district, in contemplation of official action by the trustee, officer, or employee or by the district or in reliance on information to which the trustee, officer, or employee has access in an official capacity and which has not been made public, commits misuse of official information if the trustee, officer, or employee:~~]

[~~(a) acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the information or official action;~~]

[~~(b) speculates or wagers on the basis of the information or official action; or~~]

[~~(c) aids, advises, or encourages another to do so with intent to confer upon any person a special pecuniary benefit.~~]

[~~(6) Each trustee, officer, and employee who violates this section:~~]

[~~(a) is guilty of a class B misdemeanor; and~~]

[~~(b) if convicted, shall be terminated from board appointment or district employment.~~]

Each trustee, officer, and employee of a public transit district is subject to the provisions of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

Section 4. Section 59-12-2213 is amended to read:

59-12-2213. County, city, or town option sales and use tax to fund a system for public transit -- Base -- Rate.

(1) Subject to the other provisions of this part, a county, city, or town may impose a sales and use tax under this section of up to:

[~~(1)~~] (a) for a county, city, or town other than a county, city, or town described in Subsection [~~(2)~~] (1)(b), .25% on the transactions described in Subsection 59-12-103(1) located within the county, city, or town to fund a system for public transit; or

[~~(2)~~] (b) for a county, city, or town within which a tax is not imposed under Section 59-12-2216, .30% on the transactions described in Subsection 59-12-103(1) located within the county, city, or town, to fund a system for public transit.

(2) Notwithstanding Section 59-12-2208, a county, city, or town legislative body is not required to submit an opinion question to the county's, city's, or town's registered voters in accordance with Section 59-12-2208 to impose a sales and use tax under this section if the county, city, or town imposes the sales and use tax under Section 59-12-2216 on or before July 1, 2011.

CHAPTER 224
S. B. 243
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

HISTORIC AREAS OR SITES AMENDMENTS

Chief Sponsor: Wayne L. Niederhauser
House Sponsor: Christopher N. Herrod

LONG TITLE

General Description:

This bill enacts language related to municipal land use provisions and historic districts or areas.

Highlighted Provisions:

This bill:

- prohibits a city of the first class in a county of the first class from establishing a local historic district or area in certain circumstances;
- prohibits a municipality from reviewing a land use application in certain circumstances; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-503, as renumbered and amended by Laws of Utah 2005, Chapter 254

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

Section 1. Section 10-9a-503 is amended to read:

10-9a-503. Land use ordinance or zoning map amendments -- Limited prohibition on designation of historic district or area.

(1) The legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use ordinance.

(2) The legislative body may not make any amendment authorized by this [~~subsection~~] section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.

(4) (a) Notwithstanding Subsection (1), on or after May 10, 2011, and before May 8, 2012, within an area designated on the National Register of Historic Places that has on or before March 1, 2011, a land use application pending to designate the area as a local historic district or area, the legislative body of a city of the first class in a county of the first class may not:

(i) establish the local historic district or area;

(ii) adopt or amend a land use ordinance affecting the area except as provided in Subsection (4)(c); and

(iii) authorize a demolition permit for more than 75% of the above grade area of any structure on property located within the area.

(b) A land use application in an area subject to Subsection (4)(a):

(i) shall be stayed from any further proceedings conducted by the municipality before May 9, 2012; and

(ii) is not subject to Section 10-9a-509 or 10-9a-509.5.

(c) The provisions of this Subsection (4) do not apply to an adopted or amended land use ordinance applicable generally throughout a municipality unless the ordinance is enacted to contravene the purpose of this Subsection (4)(a).

CHAPTER 225
S. B. 244
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

SALT LAKE COUNTY HIGHWAY PROJECT FUNDING

Chief Sponsor: Wayne L. Niederhauser
House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to funding for highway projects within Salt Lake County.

Highlighted Provisions:

This bill:

- provides that if project savings are identified by the Department of Transportation and if the use of funds is not in violation of any agreement, the Department of Transportation shall provide $1,000,000 of the funds to Draper City to pay for highway improvements to 13490 South.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-2-121.4, as enacted by Laws of Utah 2010, Chapter 168

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

Section 1. Section 72-2-121.4 is amended to read:

72-2-121.4. 2010 interlocal agreement governing state highway projects in Salt Lake County.

(1) Under the direction of the attorney general, the state of Utah and Salt Lake County may enter into an interlocal agreement that includes, at minimum, the provisions specified in this section.

(2) The attorney general shall ensure that, in the agreement, Salt Lake County covenants to:

(a) issue revenue bonds in an amount generating proceeds of at least $77,000,000, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements, and secured by revenues received from the state of Utah under Section 72-2-121.3;

(b) transfer at least $68,500,000 to the Department of Transportation to be used for state highway projects in Salt Lake County as provided in the interlocal agreement; and

(c) use or transfer to a municipality to use $8,500,000 to pay all or part of the costs of the following highway construction projects in Salt Lake County in the following amounts:

(i) $2,000,000 to Salt Lake County for 2300 East in Salt Lake County;

(ii) $3,500,000 to Salt Lake City for North Temple;

(iii) $1,500,000 to Murray City for 4800 South; and

(iv) $1,500,000 to Riverton City for 13400 South -- 4000 West to 4570 West.

(3) The attorney general shall ensure that, in the agreement, the state of Utah covenants to:

(a) use the money transferred by Salt Lake County under Subsection (2)(b) to pay all or part of the costs of the following state highway construction or reconstruction projects within Salt Lake County:

(i) 5400 South -- Bangerter Highway to 4000 West;

(ii) Bangerter Highway at SR-201;

(iii) 12300 South at State Street;

(iv) Bangerter Highway at 6200 South;

(v) Bangerter Highway at 7000 South;

(vi) Bangerter Highway at 3100 South;

(vii) 5400 South -- 4000 West to past 4800 West;

(viii) 9400 South and Wasatch Boulevard; and

(ix) I-215 West Interchange -- 3500 South to 3800 South and ramp work;

(b) widen and improve US-89 between 7200 South and 9000 South with available highway funding identified by the commission; and

(c) transfer to Salt Lake County or its designee from the 2010 Salt Lake County Revenue Bond Sinking Fund the amount certified by Salt Lake County as necessary to pay:

(i) the debt service on the revenue bonds issued by Salt Lake County; and

(ii) any additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(4) The costs under Subsections (2)(c) and (3)(a) may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient to the facilities and all related engineering, architectural, and legal fees.

(5) In preparing the agreement required by this section, the attorney general and Salt Lake County shall:

(a) review each existing interlocal agreement with Salt Lake County concerning Salt Lake County revenues received by the state for state highway projects within Salt Lake County; and

(b) as necessary, modify those agreements or draft a new interlocal agreement encompassing all of the provisions necessary to reflect the state of Utah's and Salt Lake County's obligations for those revenues and projects.

(6) If project savings are identified by the Department of Transportation from the funds provided to the Department of Transportation as described in Subsection (2)(b) and if the use of funds is not in violation of any agreement, the Department of Transportation shall provide $1,000,000 of the funds described in Subsection (2)(b) to Draper City to pay for highway improvements to 13490 South.

CHAPTER 226
S. B. 248
Passed March 10, 2011
Approved March 22, 2011
Effective January 1, 2012

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill modifies provisions relating to access to the Controlled Substance Database.

Highlighted Provisions:

This bill:

- authorizes certain individuals to access the controlled substance database for the purpose of reviewing a patient's request for workers' compensation benefits; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2012.

Utah Code Sections Affected:

AMENDS:

58-37f-301, as enacted by Laws of Utah 2010, Chapter 287 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 312

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

Section 1. Section 58-37f-301 is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies; or

(ii) when the information is requested by the Department of Health in relation to a person whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification

number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(3)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances; or

(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

(h) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(h), from the database; [~~and~~]

(i) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made[~~.~~];

(j) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

(i) a member of the medical panel described in Section 34A-2-601; or

(ii) a physician offering a second opinion regarding treatment.

(3) (a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (2)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (2)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(4) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

Section 2. Effective date.

This bill takes effect on January 1, 2012.

CHAPTER 227
S. B. 250
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

ELECTRONIC TRANSMISSIONS AND DIRECTORS ACTIONS

Chief Sponsor: Benjamin M. McAdams
House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill modifies the Utah Revised Business Corporation Act to address how directors may take action without a meeting.

Highlighted Provisions:

This bill:

- allows written consent to be given through electronic transmission; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-821, as enacted by Laws of Utah 1992, Chapter 277

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

Section 1. Section 16-10a-821 is amended to read:

16-10a-821. Action without meeting.

(1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to the action in writing.

(2) (a) Action is taken under this section at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive the revocation.

(b) (i) Unless otherwise provided by the bylaws, a director may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.

(ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:

(A) that the electronic transmission is transmitted by the director; and

(B) the date on which the electronic transmission is transmitted.

(iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.

(3) Action under this section is effective at the time it is taken under Subsection (2), unless the board of directors establishes a different effective date.

(4) Action taken under this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

CHAPTER 228
S. B. 261
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

CHANGES TO TRUST DEED FORECLOSURE PROVISIONS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies provisions relating to trust deed foreclosures.

Highlighted Provisions:

This bill:

- imposes civil liability on a person who violates specified trustee provisions;
- modifies a provision relating to successor trustees;
- imposes a duty on a trustee who exercises a power of sale; and
- requires a beneficiary or the beneficiary's agent to provide notice to a trustor on a residential property if the beneficiary or agent does not intend to instruct a trustee to defer a notice of sale despite a temporary reduced payment arrangement and imposes civil liability for a failure to do so.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-22, as last amended by Laws of Utah 2002, Chapter 209
57-1-25, as last amended by Laws of Utah 2010, Chapter 66

ENACTS:

57-1-23.5, Utah Code Annotated 1953
57-1-24.5, Utah Code Annotated 1953

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

Section 1. Section 57-1-22 is amended to read:

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

(1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) The substitution shall:

(a) identify the trust deed by stating:

(i) the names of the original parties to the trust deed;

(ii) the date of recordation; and

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address of the new trustee; and

(d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) (a) If not previously recorded[~~,~~] at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

(4) A substitution of trustee shall be in substantially the following form:

Substitution of Trustee
(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ____ as trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah.

(Insert legal description)

Signature_____

(Certificate of Acknowledgment)

Section 2. Section 57-1-23.5 is enacted to read:

57-1-23.5. Civil liability for unauthorized person who exercises power of sale.

(1) As used in this section:

(a) "Unauthorized person" means a person who does not qualify as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

(b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized person.

(2) (a) An unauthorized person who conducts an unauthorized sale is liable to the trustor for the actual damages suffered by the trustor as a result of the unauthorized sale or $2,000, whichever is greater.

(b) In an action under Subsection (2)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

Section 3. Section 57-1-24.5 is enacted to read:

57-1-24.5. Notice to trustor of intent not to defer notice of sale.

(1) A beneficiary, or the beneficiary's authorized agent, shall deliver or send a notice to a trustor as provided in Subsection (2) if:

(a) the trust property is residential;

(b) a notice of default is filed under Section 57-1-24 with respect to the trust property;

(c) during the three-month period described in Subsection 57-1-24(3), the beneficiary or agent agrees to accept reduced payments from the trustor on a temporary basis; and

(d) notwithstanding the reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection 57-1-24(3).

(2) A notice under Subsection (1) shall:

(a) be in writing;

(b) (i) be hand delivered to the trustor; or

(ii) be sent by certified mail, return receipt requested, to the trustor at the address of the trust property;

(c) be delivered or sent on or before the date that is 30 days after the notice of default is filed or 10 days after the beneficiary or agent agrees to accept reduced payments, whichever is later; and

(d) inform the trustor that, despite the reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection 57-1-24(3).

(3) A beneficiary or agent who sends or delivers notice to a trustor under this section shall mail a copy of the notice to the trustee.

(4) The failure of a beneficiary or agent to comply with a requirement of this section does not affect the validity of a trustee's sale of the trust property.

(5) (a) A beneficiary or agent who fails to send or deliver a notice to a trustor as required in this section is liable to the trustor for the actual damages suffered by the trustor as a result of the failure or $2,000, whichever is greater.

(b) In an action under Subsection (5)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

Section 4. Section 57-1-25 is amended to read:

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.

(1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:

(a) by publication of the notice:

(i) (A) at least three times;

(B) once a week for three consecutive weeks;

(C) the last publication to be at least 10 days but not more than 30 days before the date the sale is scheduled; and

(D) in a newspaper having a general circulation in each county in which the property to be sold, or some part of the property to be sold, is situated; and

(ii) in accordance with Section 45-1-101 for 30 days before the date the sale is scheduled;

(b) by posting the notice:

(i) at least 20 days before the date the sale is scheduled; and

(ii) (A) in some conspicuous place on the property to be sold; and

(B) at the office of the county recorder of each county in which the trust property, or some part of it, is located; and

(c) if the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property:

(i) by posting the notice, including the statement required under Subsection (3)(b):

(A) on the primary door of each dwelling unit on the property to be sold, if the property to be sold has fewer than nine dwelling units; or

(B) in at least two conspicuous places on the property to be sold, in addition to the posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more dwelling units; or

(ii) by mailing the notice, including the statement required under Subsection (3)(b), to the occupant of each dwelling unit on the property to be sold.

(2) (a) The sale shall be held at the time and place designated in the notice of sale.

(b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

(c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.

(3) (a) The notice of sale shall be in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States at the time of sale, at (insert location of sale) _____on _____(month\day\year), at __.m. of said day, for the purpose of foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor of ____, covering real property located at ____, and more particularly described as:

(Insert legal description)

The current beneficiary of the trust deed is _____ and the record owners of the property as of the recording of the notice of default are_____and _____. Dated _____(month\day\year).

_____
Trustee

(b) If the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property, the notice required under Subsection (1)(c) shall include a statement, in at least 14-point font, substantially as follows:

"Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured. If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the date you are served with a notice to vacate, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a defect in that notice may not be the basis for challenging or invaliding a trustee's sale.

(5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

CHAPTER 229
S. B. 262
Passed March 9, 2011
Approved March 22, 2011
Effective July 1, 2011

TOBACCO PRODUCTS AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Christopher N. Herrod

LONG TITLE

General Description:

This bill amends the Cigarette and Tobacco Tax and Licensing chapter to address the taxation of little cigars.

Highlighted Provisions:

This bill:

- defines terms;
- adjusts the tobacco products tax rate on little cigars; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-14-102, as last amended by Laws of Utah 2010, Chapter 115
59-14-302, as last amended by Laws of Utah 2010, Chapters 115, 415 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 407

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

Section 1. Section 59-14-102 is amended to read:

59-14-102. Definitions.

As used in this chapter:

(1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

(a) regardless of:

(i) the size of the roll;

(ii) the shape of the roll; or

(iii) whether the tobacco is:

(A) flavored;

(B) adulterated; or

(C) mixed with any other ingredient; and

(b) if the wrapper or cover of the roll is made of paper or any other substance or material except tobacco.

(2) "Consumer" means a person that is not required:

(a) under Section 59-14-201 to obtain a license under Section 59-14-202; or

(b) under Section 59-14-301 to obtain a license under Section 59-14-202.

(3) "Counterfeit cigarette" means:

(a) a cigarette that has a false manufacturing label; or

(b) a package of cigarettes bearing a counterfeit tax stamp.

(4) "Importer" means a person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any other person doing business as a distributor or retailer of cigarettes on tribal lands located in the state.

(6) "Little cigar" means a roll for smoking:

(a) made wholly or in part of tobacco;

(b) that uses an integrated cellulose acetate filter or other similar filter; and

(c) that is wrapped in a substance:

(i) containing tobacco; and

(ii) that is not exclusively natural leaf tobacco.

[~~(6)~~] (7) "Manufacturer" means a person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

[~~(7)~~] (8) "Moist snuff" means tobacco that:

(a) is finely:

(i) cut;

(ii) ground; or

(iii) powdered;

(b) has at least 45% moisture content, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) is not intended to be:

(i) smoked; or

(ii) placed in the nasal cavity; and

(d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:

(i) tablets;

(ii) lozenges;

(iii) strips;

(iv) sticks; or

(v) packages containing multiple single-use units.

[~~(8)~~] (9) "Retailer" means a person that:

(a) sells or distributes a cigarette to a consumer in the state; or

(b) intends to sell or distribute a cigarette to a consumer in the state.

[~~(9)~~] (10) "Stamp" means the indicia required to be placed on a cigarette package that evidences payment of the tax on cigarettes required by Section 59-14-205.

[~~(10)~~] (11) (a) "Tobacco product" means a product made of, or containing, tobacco.

(b) "Tobacco product" includes:

(i) a little cigar; or

(ii) moist snuff.

(c) "Tobacco product" does not include a cigarette.

[~~(11)~~] (12) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section 2. Section 59-14-302 is amended to read:

59-14-302. Tax basis -- Rates.

(1) As used in this section:

(a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco product charges after subtracting a discount.

(b) "Manufacturer's sales price" includes an original Utah destination freight charge, regardless of:

(i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

(ii) who pays the original Utah destination freight charge.

(2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

(3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

[~~(4) The rate of the tax under this section is, beginning on July 1, 2010:~~]

[~~(a) for~~] (4) For tobacco products except for moist snuff[~~,~~] or a little cigar, the rate of the tax under this section is .86 multiplied by the manufacturer's sales price[~~; and~~].

[~~(b) subject to Subsection (5), for moist snuff, $1.83 per ounce.~~]

(5) (a) [~~The~~] Subject to Subsection (5)(b), the tax under this section on moist snuff [~~shall be~~] is imposed:

(i) at a rate of $1.83 per ounce; and

(ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

(b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce, a proportionate amount of the tax described in Subsection [~~(4)(b)~~] (5)(a) is imposed:

(i) on that fractional part of one ounce; and

(ii) in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) A little cigar is taxed in the same manner as a cigarette is taxed under Subsection 59-14-204(2).

[~~(6)~~] (7) (a) Moisture content of a tobacco product is determined at the time of packaging.

(b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

(i) for a period of three years after the last day on which the manufacturer distributes the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of the tobacco product available for review by the commission, upon demand; and

(ii) provide a document, to the person described in Subsection (3) to whom the manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco product, as verified by the scientific evidence described in Subsection [~~(6)~~] (7)(b)(i).

(c) A manufacturer who fails to comply with the requirements of Subsection [~~(6)~~] (7)(b) is liable for the nonpayment or underpayment of taxes on the tobacco product by a person who relies, in good faith, on the document described in Subsection [~~(6)~~] (7)(b)(ii).

(d) A person described in Subsection (3) who is required to pay tax on a tobacco product:

(i) shall, for a period of three years after the last day on which the person pays the tax on the tobacco product, keep the document described in Subsection [~~(6)~~] (7)(b)(ii) available for review by the commission, upon demand; and

(ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due to the person's good faith reliance on the document described in Subsection [~~(6)~~] (7)(b)(ii).

Section 3. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 230
S. B. 273
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

EMERGENCY RESPONDER FEES

Chief Sponsor: J. Stuart Adams
House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies Title 10, Utah Municipal Code, and Title 11, Cities, Counties, and Local Taxing Units, by prohibiting a municipality or political subdivision from charging a first responder fee.

Highlighted Provisions:

This bill:

- defines the term "political subdivision"; and
- prohibits a municipality or political subdivision from charging an individual a flat fee for responding to a traffic incident.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
10-8-55.5, Utah Code Annotated 1953
11-46-101, Utah Code Annotated 1953
11-46-102, Utah Code Annotated 1953

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

Section 1. Section 10-8-55.5 is enacted to read:

10-8-55.5. Prohibition of flat response fee.

(1) A municipality, or a person who contracts with a municipality to provide emergency services:

(a) may not impose a flat fee, or collect a flat fee, from an individual involved in a traffic incident; and

(b) may only charge the individual for the actual cost of services provided in responding to the traffic incident, limited to:

(i) medical costs for:

(A) transporting an individual from the scene of a traffic accident; or

(B) treatment of a person injured in a traffic accident;

(ii) repair to damaged public property, if the individual is legally liable for the damage;

(iii) the cost of materials used in cleaning up the traffic accident, if the individual is legally liable for the traffic accident; and

(iv) towing costs.

(2) If a municipality, or a person who contracts with a municipality to provide emergency services, imposes a charge on more than one individual for the actual cost of responding to a traffic incident, the municipality or person contracting with the municipality shall apportion the charges so that it does not receive more for responding to the traffic incident than the actual response cost.

Section 2. Section 11-46-101 is enacted to read:

CHAPTER 46. EMERGENCY RESPONSE

11-46-101. (Codified as 11-48-101) Title.

This chapter is known as "Emergency Response."

Section 3. Section 11-46-102 is enacted to read:

11-46-102. (Codified as 11-48-102) Prohibition of response fees.

(1) As used in this section, "political subdivision" means a county, city, town, local district, or special district.

(2) A political subdivision, or a person who contracts with a political subdivision to provide emergency services:

(a) may not impose a flat fee, or collect a flat fee, from an individual involved in a traffic incident; and

(b) may only charge the individual for the actual cost of services provided in responding to the traffic incident, limited to:

(i) medical costs for:

(A) transporting an individual from the scene of a traffic accident; or

(B) treatment of a person injured in a traffic accident;

(ii) repair to damaged public property, if the individual is legally liable for the damage;

(iii) the cost of materials used in cleaning up the traffic accident, if the individual is legally liable for the traffic accident; and

(iv) towing costs.

(3) If a political subdivision, or a person who contracts with a political subdivision to provide emergency services, imposes a charge on more than one individual for the actual cost of responding to a traffic incident, the political subdivision or person contracting with the political subdivision shall apportion the charges so that it does not receive more for responding to the traffic incident than the actual response cost.

CHAPTER 231
S. B. 282
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

SMALL MINING OPERATIONS

Chief Sponsor: David P. Hinkins
House Sponsor: Michael E. Noel

LONG TITLE

General Description:
This bill amends the definition of "small mining operations" in Title 40, Chapter 8, Utah Mined Land Reclamation Act.

Highlighted Provisions:
This bill:

- amends the definition of "small mining operations" in Title 40, Chapter 8, Utah Mined Land Reclamation Act.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:

AMENDS:
40-8-4, as last amended by Laws of Utah 2009, Chapter 344

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

Section 1. Section 40-8-4 is amended to read:

40-8-4. Definitions.

As used in this chapter:

(1) "Adjudicative proceeding" means:

(a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or

(b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

(2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.

(3) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.

(4) "Board" means the Board of Oil, Gas, and Mining.

(5) "Conference" means an informal adjudicative proceeding conducted by the division or board.

(6) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.

(7) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(8) "Division" means the Division of Oil, Gas, and Mining.

(9) "Emergency order" means an order issued by the board in accordance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(10) (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and operating other facilities related to these activities.

(11) "Hearing" means a formal adjudicative proceeding conducted by the board under its procedural rules.

(12) (a) "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit requirement or other requirement of this chapter in a mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.

(b) A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(13) (a) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to:

(i) on-site private ways, roads, and railroads;

(ii) land excavations;

(iii) exploration sites;

(iv) drill sites or workings;

(v) refuse banks or spoil piles;

(vi) evaporation or settling ponds;

(vii) stockpiles;

(viii) leaching dumps;

(ix) placer areas;

(x) tailings ponds or dumps; and

(xi) work, parking, storage, or waste discharge areas, structures, and facilities.

(b) All lands shall be excluded from the provisions of Subsection (13)(a) that would:

(i) be includable as land affected, but which have been reclaimed in accordance with an approved plan, as may be approved by the board; and

(ii) lands in which mining operations have ceased prior to July 1, 1977.

(14) (a) "Mining operation" means activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(b) "Mining operation" does not include:

(i) the extraction of sand, gravel, and rock aggregate;

(ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;

(iii) the extraction of geothermal steam;

(iv) smelting or refining operations;

(v) off-site operations and transportation;

(vi) reconnaissance activities; or

(vii) activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

(15) "Notice" means:

(a) notice of intention, as defined in this chapter; or

(b) written information given to an operator by the division describing compliance conditions at a mining operation.

(16) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.

(17) "Off-site" means the land areas that are outside of or beyond the on-site land.

(18) (a) "On-site" means the surface lands on or under which surface or underground mining operations are conducted.

(b) A series of related properties under the control of a single operator, but separated by small parcels of land controlled by others, will be considered to be a single site unless an exception is made by the division.

(19) "Operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

(20) "Order" means written information provided by the division or board to an operator or other parties, describing the compliance status of a permit or mining operation.

(21) "Owner" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

(22) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.

(23) "Permit" means a permit or notice to conduct mining operations issued by the division.

(24) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.

(25) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

(26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.

(27) "Small mining operations" means mining operations [~~which~~] that disturb or will disturb [~~five~~] 10 or less surface acres at any given time in an unincorporated area of a county or five or less surface acres at any given time in an incorporated area of a county.

(28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

CHAPTER 232
S. B. 285
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

INDUSTRIAL ASSISTANCE FUND AMENDMENTS

Chief Sponsor: Curtis S. Bramble
House Sponsor: Todd E. Kiser

LONG TITLE

General Description:

This bill modifies a provision relating to the industrial assistance fund.

Highlighted Provisions:

This bill:

- includes a specified sports development organization with entities that may qualify for money from the Industrial Assistance Account.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-1-909, as last amended by Laws of Utah 2010, Chapters 245 and 278

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

Section 1. Section 63M-1-909 is amended to read:

63M-1-909. Financial assistance to entities offering economic opportunities.

(1) Subject to the duties and powers of the board under Section 63M-1-303, the administrator may provide money from the Industrial Assistance Account to an entity offering an economic opportunity if that entity:

(a) applies to the administrator; and

(b) meets the qualifications of Subsection (2).

(2) The applicant shall:

(a) demonstrate to the satisfaction of the administrator the nature of the economic opportunity and the related benefit to the economic well-being of the state by providing evidence documenting the logical and compelling linkage, either direct or indirect, between the expenditure of money necessitated by the economic opportunity and the likelihood that the state's tax base, regions of the state's tax base, or specific components of the state's tax base will not be reduced but will be maintained or enlarged;

(b) demonstrate how the funding request will act in concert with other state, federal, or local agencies to achieve the economic benefit;

(c) demonstrate how the funding request will act in concert with free market principles;

(d) in the case of an economic opportunity that includes the retention of jobs, demonstrate how the potential relocation of jobs outside the state is related to a merger, acquisition, consolidation, or similar business reason other than the applicant simply requesting state assistance to remain in the state;

(e) satisfy other criteria the administrator considers appropriate; and

(f) be either:

(i) an entity whose purpose is to exclusively or substantially promote, develop, or maintain the economic welfare and prosperity of the state as a whole, regions of the state, or specific components of the state, including an entity that is a sports development organization under contract with the state for sports development and sporting event attraction and related activities that provide an economic impact or promotional value to the state; or

(ii) a company or individual that does not otherwise qualify under Section 63M-1-906.

(3) Subject to the duties and powers of the board under Section 63M-1-303, the administrator shall:

(a) make findings as to whether an applicant has satisfied each of the conditions set forth in Subsection (2);

(b) establish benchmarks and timeframes in which progress toward the completion of the agreed upon activity is to occur;

(c) monitor compliance by an applicant with any contract or agreement entered into by the applicant and the state as provided by Section 63M-1-907; and

(d) make funding decisions based upon appropriate findings and compliance.

CHAPTER 233
S. B. 286
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

GRANDPARENTS' VISITATION RIGHTS

Chief Sponsor: David P. Hinkins
House Sponsor: Christine F. Watkins

LONG TITLE

General Description:

This bill expands the ability of grandparents to visit with their grandchildren who are in state custody.

Highlighted Provisions:

This bill:

- requires that grandparents are considered for visitation with grandchildren who are in state custody.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-205, as last amended by Laws of Utah 2009, Chapter 161

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

Section 1. Section 62A-4a-205 is amended to read:

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

(i) mental health;

(ii) education; and

(iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

(ii) the child;

(iii) the child's foster parents; and

(iv) if appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;

(c) the primary permanency goal for the child and the reason for selection of that goal;

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and

(k) social summaries that include case history information pertinent to case planning.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(2)(a)(ii) and (b).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

(i) protect the physical safety of the child;

(ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(i) the child's fear of the parent; and

(ii) the nature of the alleged abuse or neglect.

(11) The division shall consider visitation with their grandparents for children in state custody if the division determines visitation to be in the best interest of the child and:

(a) there are no safety concerns regarding the behavior or criminal background of the grandparents;

(b) allowing visitation would not compete with or undermine reunification goals;

(c) there is a substantial relationship between the grandparents and children; and

(d) the visitation will not unduly burden the foster parents.

CHAPTER 234
S. B. 293
Passed March 10, 2011
Approved March 22, 2011
Effective March 22, 2011

MILITARY INSTALLATION DEVELOPMENT AUTHORITY AND ANNEXATION AMENDMENTS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill amends provisions related to a Military Installation Development Authority and its ability to petition for annexation of land, create project areas, and issue bonds.

Highlighted Provisions:

This bill:

- allows a Military Installation Development Authority (MIDA) to petition for annexation of a project area as if it was the sole private property owner under certain circumstances;
- requires the MIDA to provide notice of the annexation to the military installation;
- permits the military installation to object to the petition for annexation;
- amends the land that may be included in a project area;
- does not require the permission of a county for the creation of a MIDA project area if the land in the project area is wholly within a municipality; and
- clarifies the bonding process for the project area.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

10-2-402, as last amended by Laws of Utah 2009, Chapters 92, 205, and 230
63H-1-401, as last amended by Laws of Utah 2010, Chapter 9
63H-1-601, as enacted by Laws of Utah 2007, Chapter 23

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

Section 1. Section 10-2-402 is amended to read:

10-2-402. Annexation -- Limitations.

(1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be annexed to the municipality as provided in this part.

(b) An unincorporated area may not be annexed to a municipality unless:

(i) it is a contiguous area;

(ii) it is contiguous to the municipality;

(iii) except as provided in Subsection 10-2-418(1)(b), annexation will not leave or create an unincorporated island or unincorporated peninsula; and

(iv) for an area located in a specified county with respect to an annexation that occurs after December 31, 2002, the area is within the proposed annexing municipality's expansion area.

(2) Except as provided in Section 10-2-418, a municipality may not annex an unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

(3) (a) An annexation under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of that parcel has signed the annexation petition under Section 10-2-403.

(b) A piece of real property that has more than one parcel number is considered to be a single parcel for purposes of Subsection (3)(a) if owned by the same owner.

(4) A municipality may not annex an unincorporated area in a specified county for the sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to annex the same or a related area unless the municipality has the ability and intent to benefit the annexed area by providing municipal services to the annexed area.

(5) The legislative body of a specified county may not approve urban development within a municipality's expansion area unless:

(a) the county notifies the municipality of the proposed development; and

(b) (i) the municipality consents in writing to the development; or

(ii) (A) within 90 days after the county's notification of the proposed development, the municipality submits to the county a written objection to the county's approval of the proposed development; and

(B) the county responds in writing to the municipality's objections.

(6) (a) An annexation petition may not be filed under this part proposing the annexation of an area located in a county that is not the county in which the proposed annexing municipality is located unless the legislative body of the county in which the area is located has adopted a resolution approving the proposed annexation.

(b) Each county legislative body that declines to adopt a resolution approving a proposed annexation described in Subsection (6)(a) shall provide a written explanation of its reasons for declining to approve the proposed annexation.

(7) (a) As used in this Subsection (7), "airport" means an area that the Federal Aviation Administration has, by a record of decision, approved for the construction or operation of a Class I, II, or III commercial service airport, as designated by the Federal Aviation Administration in 14 C.F.R. Part 139.

(b) A municipality may not annex an unincorporated area within 5,000 feet of the center line of any runway of an airport operated or to be constructed and operated by another municipality unless the legislative body of the other municipality adopts a resolution consenting to the annexation.

(c) A municipality that operates or intends to construct and operate an airport and does not adopt a resolution consenting to the annexation of an area described in Subsection (7)(b) may not deny an annexation petition proposing the annexation of that same area to that municipality.

(8) An annexation petition may not be filed if it proposes the annexation of an area that is within a proposed township in a petition to establish a township under Subsection 17-27a-306(1)(c) that has been certified under Subsection 17-27a-306(1)(f), until after the canvass of an election on the proposed township under Subsection 17-27a-306(1)(h).

(9) (a) A municipality may not annex an unincorporated area located within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, without the authority's approval.

(b) (i) Except as provided in Subsection (9)(b)(ii), the Military Installation Development Authority may petition for annexation of a project area and contiguous surrounding land to a municipality as if it was the sole private property owner of the project area and surrounding land, if the area to be annexed is entirely contained within the boundaries of a military installation.

(ii) Before petitioning for annexation under Subsection (9)(b)(i), the Military Installation Development Authority shall provide the military installation with a copy of the petition for annexation. The military installation may object to the petition for annexation within 14 days of receipt of the copy of the annexation petition. If the military installation objects under this Subsection (9)(b)(ii), the Military Installation Development Authority may not petition for the annexation as if it was the sole private property owner.

(iii) If any portion of an area annexed under a petition for annexation filed by a Military Installation Development Authority is located in a specified county:

(A) the annexation process shall follow the requirements for a specified county; and

(B) the provisions of Subsection 10-2-402(6) do not apply.

Section 2. Section 63H-1-401 is amended to read:

63H-1-401. Preparation of project area plan -- Required contents of project area plan.

(1) (a) Before [~~spending any funds in a project area or~~] entering into any lease or development agreement, the authority board shall adopt a project area plan as provided in this part.

(b) In order to adopt a project area plan, the authority board shall:

(i) prepare a draft project area plan;

(ii) give notice as required under Subsection 63H-1-402(2);

(iii) hold at least one public meeting, as required under Subsection 63H-1-402(1); and

(iv) after holding at least one public meeting and subject to Subsection (1)(c), adopt the draft project area plan as the project area plan.

(c) Before adopting a draft project area plan as the project area plan, the authority board may make modifications to the draft project area plan that the board considers necessary or appropriate.

(2) Each project area plan and draft project area plan shall contain:

(a) a legal description of the boundary of the project area that is the subject of the project area plan;

(b) the authority's purposes and intent with respect to the project area; and

(c) the board's findings and determination that:

(i) there is a need to effectuate a public purpose;

(ii) there is a public benefit to the proposed development project;

(iii) it is economically sound and feasible to adopt and carry out the project area plan; and

(iv) carrying out the project area plan will promote the public peace, health, safety, and welfare of the community in which the project area is located.

(3) [~~(a)~~] A project area described in a project area plan:

[~~(i)~~] (a) shall include military land; and

[~~(ii)~~] (b) may include [~~one or all of the following: (A) private land if: (I) the owner of the private land consents to the inclusion of the land within the project area; (II) subject to Subsection (3)(b), the private land included within the project area is contiguous to the military land included within the project area; (III) the total size of the project area does not exceed 100 acres; and (IV) the project area is located within a county of the third, fourth, fifth, or sixth class; (B) up to an additional 150 acres of public or private land that is not contiguous to military land if: (I) the land is included in a project area that will include a hotel facility for current and retired military personnel at a military discount rate; (II) the owner of the public or private land consents to the inclusion of the land in the project area; and (III) 50 or more acres of the 150 acres was jointly owned by a municipality and a county on January 1, 2010; or (C)~~] public or private land, whether or not it is contiguous to military land, if:

[~~(I)~~] (i) the legislative body of the county in which the public or private land is located, if the public

land or private land is located in an unincorporated county, passes a resolution consenting to the inclusion of the land in the project area;

[~~(II)~~] (ii) the legislative body of an included municipality passes a resolution consenting to the inclusion of the land in the project area; and

[~~(III)~~] (iii) the owner of the public or private land consents to the inclusion of the land in the project area.

[~~(b) Private land does not lose its contiguousness to military land because of the presence of a road or right-of-way.~~]

Section 3. Section 63H-1-601 is amended to read:

63H-1-601. Resolution authorizing issuance of authority bonds -- Characteristics of bonds.

(1) The authority may not issue bonds under this part unless the authority board first adopts a resolution authorizing their issuance.

(2) (a) As provided in the authority resolution authorizing the issuance of bonds under this part or the trust indenture under which the bonds are issued, bonds issued under this part may be issued in one or more series and may be sold at public or private sale and in the manner provided in the resolution or indenture.

(b) Bonds issued under this part shall bear the date, be payable at the time, bear interest at the rate, be in the denomination and in the form, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be subject to the terms of redemption or tender, with or without premium, be payable in the medium of payment and at the place, and have other characteristics as provided in the authority resolution authorizing their issuance or the trust indenture under which they are issued.

(3) Upon the board's adoption of a resolution providing for the issuance of bonds, the board may provide for the publication of the resolution:

(a) in a newspaper having general circulation in the authority's boundaries; and

(b) as required in Section 45-1-101.

(4) In lieu of publishing the entire resolution, the board may publish notice of bonds that contains the information described in Subsection 11-14-316(2).

(5) For a period of 30 days after the publication, any person in interest may contest:

(a) the legality of the resolution or proceeding;

(b) any bonds that may be authorized by the resolution or proceeding; or

(c) any provisions made for the security and payment of the bonds.

(6) (a) A person may contest the matters set forth in Subsection (5) by filing a verified written complaint, within 30 days of the publication under Subsection (5), in the district court of the county in which the person resides.

(b) A person may not contest the matters set forth in Subsection (5), or the regularity, formality, or legality of the resolution or proceeding, for any reason, after the 30-day period for contesting provided in Subsection (6)(a).

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 235
S. B. 304
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

PREVENTING BULLYING AND HAZING IN ELEMENTARY AND SECONDARY SCHOOLS

Chief Sponsor: Ralph Okerlund
House Sponsor: Bill Wright

LONG TITLE

General Description:

This bill modifies Title 53A, Chapter 11a, Bullying and Hazing, by making legislative findings, amending definitions, requiring implementation of anti-bullying and hazing policies, and requiring reporting of incidents of bullying or other conduct to the State Board of Education.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits students and school employees from engaging in:
  - bullying;
  - cyber-bullying;
  - harassment;
  - hazing;
  - retaliation; and
  - making false claims regarding the aforementioned conduct;
- requires schools, local school districts, and the State Board of Education to implement anti-bullying and hazing policies; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-11a-102, as enacted by Laws of Utah 2008, Chapter 197
53A-11a-201, as enacted by Laws of Utah 2008, Chapter 197
53A-11a-202, as enacted by Laws of Utah 2008, Chapter 197
53A-11a-301, as last amended by Laws of Utah 2010, Chapter 218
53A-11a-302, as enacted by Laws of Utah 2008, Chapter 197
53A-11a-401, as enacted by Laws of Utah 2008, Chapter 197
53A-11a-402, as enacted by Laws of Utah 2008, Chapter 197

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

Section 1. Section 53A-11a-102 is amended to read:

53A-11a-102. Definitions.

As used in this [~~part~~] chapter:

(1) (a) "Bullying" means intentionally or knowingly committing an act that:

(i) (A) endangers the physical health or safety of a school employee or student;

(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(C) involves consumption of any food, liquor, drug, or other substance;

(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(E) involves physically obstructing a school employee's or student's freedom to move; and

(ii) is done for the purpose of placing a school employee or student in fear of:

(A) physical harm to the school employee or student; or

(B) harm to property of the school employee or student.

(b) The conduct described in Subsection (1)(a) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

(2) "Communication" means the conveyance of a message, whether verbal, written, or electronic.

(3) "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

(4) "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

[~~(2)~~] (5) (a) "Hazing" means intentionally or knowingly committing an act that:

(i) (A) endangers the physical health or safety of a school employee or student;

(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(C) involves consumption of any food, liquor, drug, or other substance;

(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(E) involves physically obstructing a school employee's or student's freedom to move; and

(ii) (A) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(B) if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(b) The conduct described in Subsection [~~(2)~~] (5)(a) constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

[~~(3)~~] (6) "Policy" means a bullying and hazing policy described in Section 53A-11a-301.

[~~(4)~~] (7) "Retaliate" means an act or communication intended:

(a) as retribution against a person for reporting bullying or hazing; or

(b) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

[~~(5)~~] (8) "School" means any public elementary or secondary school or charter school.

[~~(6)~~] (9) "School board" means:

(a) a local school board; or

(b) a local charter board.

[~~(7)~~] (10) "School employee" means:

(a) school teachers;

(b) school staff;

(c) school administrators; and

(d) all others employed, directly or indirectly, by the school, school board, or school district.

Section 2. Section 53A-11a-201 is amended to read:

53A-11a-201. Bullying, cyber-bullying, harassment, hazing, sexual battery, and sexual exposure prohibited.

(1) No school employee or student may engage in bullying or harassing a school employee or student:

(a) on school property;

(b) at a school related or sponsored event;

(c) on a school bus;

(d) at a school bus stop; or

(e) while the school employee or student is traveling to or from a location or event described in Subsections (1)(a) through (d).

(2) No school employee or student may engage in hazing or cyber-bullying a school employee or student at any time or in any location.

Section 3. Section 53A-11a-202 is amended to read:

53A-11a-202. Retaliation and making false allegation prohibited.

(1) No school employee or student may engage in retaliation against:

(a) a school employee;

(b) a student; or

(c) an investigator for, or a witness of, an alleged incident of bullying, cyber-bullying, harassment, hazing, or retaliation.

(2) No school employee or student may make a false allegation of bullying, cyber-bullying, harassment, hazing, or retaliation against a school employee or student.

Section 4. Section 53A-11a-301 is amended to read:

53A-11a-301. Bullying, cyber-bullying, harassment, hazing, and retaliation policy.

[~~(1) On or before September 1, 2009, each school board shall adopt a bullying and hazing policy.~~]

(1) On or before September 1, 2012, each school board shall adopt a bullying, cyber-bullying, harassment, and hazing policy consistent with this chapter.

(2) The policy shall:

(a) be developed only with input from:

(i) students;

(ii) parents;

(iii) teachers;

(iv) school administrators;

(v) school staff; or

(vi) local law enforcement agencies; and

[~~(b) be implemented in an ongoing, consistent, and nondiscriminatory manner;~~]

[~~(c) be integrated with existing school discipline policies and violence prevention efforts; and~~]

[~~(d)~~] (b) provide protection to a student, regardless of the student's legal status.

(3) The policy shall include the following components:

(a) definitions of bullying [~~and hazing that, at a minimum, include the conduct described in the definitions of bullying and hazing under Section 53A-11a-102~~], cyber-bullying, harassment, and hazing that are consistent with this chapter;

[~~(b) the prohibitions described in Part 2, Prohibitions;~~]

[~~(c) a description of the action that may be taken, and consequences or penalties that may be~~

~~imposed, for engaging in prohibited bullying, hazing, or retaliation against a school employee or student for reporting bullying or hazing, which shall include:~~]

[~~(i) suspension; or~~]

[~~(ii) dissolution of a team, organization, or other group;~~]

[~~(d) procedures for protecting:~~]

[~~(i) a victim of bullying or hazing from being subjected to further bullying or hazing; and~~]

[~~(ii) a school employee or student from retaliation for reporting bullying or hazing;~~]

[~~(e) procedures for promptly reporting to law enforcement all acts of bullying, hazing, or retaliation that constitute criminal activity;~~]

[~~(f) procedures for promptly investigating and responding to reports of bullying, hazing, or retaliation;~~]

[~~(g) procedures allowing for anonymous reporting of bullying, hazing, or retaliation;~~]

[~~(h) specification of the persons responsible for taking, investigating, and responding to reports of bullying, hazing, or retaliation;~~]

[~~(i) a procedure for referring a victim of bullying or hazing to counseling;~~]

[~~(j) involving the parents or guardians of a perpetrator or victim of bullying, hazing, or retaliation in the process of responding to, and resolving, conduct prohibited by this chapter;~~]

[~~(k) to the extent permitted by federal and state law, including the federal Family Educational and Privacy Rights Act of 1974, as amended, a procedure informing the parents or guardians of a student who is a victim of bullying or hazing of the actions taken against the perpetrators of the bullying or hazing;~~]

[~~(l) procedures and plans for publicizing the policy to school employees, students, and parents and guardians of students; and~~]

[~~(m) procedures and plans for training school employees and students in recognizing and preventing bullying, hazing, or retaliation.~~]

(b) language prohibiting bullying, cyber-bullying, harassment, and hazing;

(c) language prohibiting retaliation against an individual who reports conduct that is prohibited under this chapter; and

(d) language prohibiting making a false report of bullying, cyber-bullying, harassment, hazing, or retaliation.

(4) A copy of the policy shall be included in student conduct handbooks and employee handbooks.

(5) A policy may not permit formal disciplinary action that is based solely on an anonymous report of bullying, cyber-bullying, harassment, hazing, or retaliation.

(6) Nothing in this chapter is intended to infringe upon the right of a school employee or student to exercise their right of free speech.

Section 5. Section 53A-11a-302 is amended to read:

53A-11a-302. Model policy and State Board of Education duties.

On or before September 1, [~~2008~~] 2011, the State Board of Education shall:

(1) develop a model policy on bullying, [~~hazing, and retaliation, consistent with Section 53A-11a-301, in order to assist a school board in adopting a policy under Section 53A-11a-301; and~~] cyber-bullying, harassment, hazing, and retaliation; and

(2) post the model policy described in Subsection (1) on the State Board of Education's website.

Section 6. Section 53A-11a-401 is amended to read:

53A-11a-401. Training, education, and prevention.

(1) A school board shall include in the training of a school employee, training regarding bullying, cyber-bullying, harassment, hazing, and retaliation.

(2) To the extent that state or federal funding is available for this purpose, school boards are encouraged to implement programs or initiatives, in addition to the training described in Subsection (1), to provide for training and education regarding, and the prevention of, bullying, hazing, and retaliation.

(3) The programs or initiatives described in Subsection (2) may involve:

(a) the establishment of a bullying task force; or

(b) the involvement of school employees, students, or law enforcement.

Section 7. Section 53A-11a-402 is amended to read:

53A-11a-402. Other forms of legal redress.

(1) Nothing in this chapter prohibits a victim of bullying, cyber-bullying, harassment, hazing, or retaliation from seeking legal redress under any other provisions of civil or criminal law.

(2) This section does not create or alter tort liability.

CHAPTER 236
S. B. 312
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

ECONOMIC DEVELOPMENT COORDINATION

Chief Sponsor: Scott K. Jenkins
House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill creates the Governor's Economic Development Coordinating Council to plan, coordinate, and recommend strategies, goals, and activities related to economic growth and development in the state.

Highlighted Provisions:

This bill:

- creates the Governor's Economic Development Coordinating Council and provides for its membership; and
- provides that council's duties and powers shall include:
  - coordinating and advising on policies and objectives related to economic development and growth in the state;
  - coordinating to avoid duplication and increase the availability of venture and seed capital for research and development and growth of new and existing businesses;
  - focusing on technologies, industries, and geographical areas in which the state can expand investment and stimulate job growth; and
  - coordinating ideas and strategies to increase national and international business activities for both urban and rural areas of the state.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63M-1-1301, Utah Code Annotated 1953
63M-1-1302, Utah Code Annotated 1953
63M-1-1303, Utah Code Annotated 1953
63M-1-1304, Utah Code Annotated 1953

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

Section 1. Section 63M-1-1301 is enacted to read:

Part 13. Governor's Economic Development Coordinating Council

63M-1-1301. Title.

This part is known as the "Governor's Economic Development Coordinating Council."

Section 2. Section 63M-1-1302 is enacted to read:

63M-1-1302. Purpose.

This part is enacted to create the Governor's Economic Development Coordinating Council for the purpose of:

(1) planning, coordinating, and recommending economic development strategies, goals, and activities for industries, businesses, and other public and private sector entities and economic development stakeholders; and

(2) coordinating activities that enhance investment in Utah businesses from the private sector to maximize the availability of venture and seed capital for research and business growth and development in the state.

Section 3. Section 63M-1-1303 is enacted to read:

63M-1-1303. Creation of council -- Membership.

(1) There is created the Governor's Economic Development Coordinating Council, hereafter referred to in this part as the "council", consisting of the following 11 members:

(a) the director, who shall serve as chair of the council;

(b) the chair of the board or the chair's designee;

(c) the chair of the Utah Science Technology and Research Governing Authority or the chair's designee;

(d) the chair of the Utah Rural Development Council or the chair's designee;

(e) the chair of the Utah Capital Investment Corporation or the chair's designee;

(f) the chair of the Economic Development Corporation of Utah or its successor organization or the chair's designee;

(g) the chair of the World Trade Center Utah or its successor organization or the chair's designee; and

(h) four members appointed by the governor, with the advice and consent of the Senate, who have expertise in the area of business or economic development, entrepreneurship, or the raising of venture or seed capital for research and business growth.

(2) (a) The four members appointed by the governor may serve for no more than two consecutive two-year terms.

(b) The governor shall appoint a replacement if a vacancy occurs from the membership described under Subsection (1)(h).

(3) Six members of the council constitute a quorum for the purpose of conducting council business and the action of a majority of a quorum constitutes the action of the council.

(4) A member may not receive compensation or benefits for the member's service on the council, but may receive per diem and travel expenses in accordance with:

(a) Sections 63A-3-106 and 63A-3-107; and

(b) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The office shall provide office space and administrative staff support for the council.

(6) The council, as a governmental entity, has all the rights, privileges, and immunities of a governmental entity of the state and its meetings are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Section 4. Section 63M-1-1304 is enacted to read:

63M-1-1304. Council powers and duties.

(1) The council shall:

(a) coordinate and advise on policies and objectives related to economic development and growth within the state;

(b) coordinate with state and private entities, including private venture capital and seed capital firms, to avoid duplication of programs and to increase the availability of venture and seed capital for research and for the development and growth of new and existing businesses in the state;

(c) focus on technologies, industries, and geographical areas of the state in which the state can expand investment and entrepreneurship and stimulate job growth;

(d) coordinate ideas and strategies to increase national and international business activities for both the urban and rural areas of the state; and

(e) plan, coordinate, advise, or recommend any other action that would better the state's economy.

(2) The council shall prepare and present an annual report of its activities to the governor and to the Legislature's Workforce Services and Community and Economic Development Interim Committee.

CHAPTER 237
S. B. 317
Passed March 9, 2011
Approved March 22, 2011
Effective May 10, 2011

STATE PARKS ACCESS HIGHWAY

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Kraig Powell

LONG TITLE

General Description:

This bill modifies the Highway Jurisdiction and Classification Act by amending provisions relating to state park access highways.

Highlighted Provisions:

This bill:

- provides for an east, south, and west access to Wasatch Mountain State Park;
- provides for access to Soldier Hollow and Cascade Springs; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-3-206, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

Section 1. Section 72-3-206 is amended to read:

72-3-206. State park access highways -- Steinaker State Park to Yuba State Park.

State park access highways include:

(1) STEINAKER STATE PARK. Access to the Steinaker State Park begins in Uintah County at State Highway 191 and proceeds northwesterly on State Highway 301 a distance of 1.7 miles to the boat ramp at the park and is under the jurisdiction of UDOT.

(2) TERRITORIAL STATEHOUSE STATE PARK. Access to the Territorial Statehouse State Park is at the parking area in Millard County at milepoint 1.0 on State Highway 100. No access road is defined.

(3) UTAH FIELD HOUSE OF NATURAL HISTORY STATE PARK. Access to Utah Field House of Natural History State Park is at the parking area in Uintah County at milepoint 145.8 on State Highway 40 at [~~235~~] 496 East Main in Vernal. No access road is defined.

(4) UTAH LAKE STATE PARK. Access to the Utah Lake State Park begins in Utah County at State Highway 114 and proceeds westerly on a county road a distance of 2.5 miles to the pay gate at the park and is under the jurisdiction of Utah County.

[~~(5) VETERAN'S MEMORIAL CEMETERY. Access to the Veteran's Memorial Cemetery is at the cemetery entrance in Utah County at 17111 South Camp Williams Road in Bluffdale. No access road is defined.~~]

(5) WASATCH MOUNTAIN STATE PARK (East Access). The East Access to the Wasatch Mountain State Park begins at the Summit-Wasatch County line and proceeds westerly on Guardsman Pass Road, a county road, a distance of .9 miles; then southeasterly on Pine Canyon Road, a county road, a distance of 7.3 miles to the campground entrance. The East Access is under the jurisdiction of Wasatch County.

(6) WASATCH MOUNTAIN STATE PARK[~~. Access~~] (South Access). The South Access to the Wasatch Mountain State Park begins in Wasatch County [~~on~~] at State Route 40 [~~at the junction of Federal Route 3130, a county road, then~~] and proceeds westerly on Federal Route 3130 [~~on~~] via River Road, Burgi Lane, and Cari Lane, county and city roads, [~~to State Highway 224 then northwesterly on State Highway 224~~] a distance of 4.3 miles to State Highway 222; then northerly on State Highway 222, a distance of 1.1 miles to the campground entrance. The South Access is under the jurisdiction of Wasatch County and Midway City.

(7) WASATCH MOUNTAIN STATE PARK (West Access). The West Access to the Wasatch Mountain State Park begins at the Salt Lake-Wasatch County line and proceeds easterly on Guardsman Pass Road, a county road, a distance of 1.7 miles; then southeasterly on Pine Canyon Road, a county road, a distance of 7.3 miles to the campground entrance. The West Access is under the jurisdiction of Wasatch County.

(8) WASATCH MOUNTAIN (Soldier Hollow). Access to Soldier Hollow begins in Wasatch County at State Highway 113 and proceeds westerly on Tate Lane, a county road; then southwesterly on Soldier Hollow Lane to the parking area and clubhouse.

(9) WASATCH MOUNTAIN (Cascade Springs). Access to Cascade Springs begins in Wasatch County at the junction of Tate Lane and Stringtown Road, county roads, and proceeds northerly on Stringtown Road; then southwesterly on Cascade Springs Drive to the parking area. The access is under the jurisdiction of Wasatch County.

[~~(7)~~] (10) WILLARD BAY STATE PARK (South). Access to the Willard Bay State Park South begins in Box Elder County at a county road and proceeds northwesterly on State Highway 312 a distance of 0.2 miles to the marina parking at the park and is under the jurisdiction of UDOT.

[~~(8)~~] (11) WILLARD BAY STATE PARK (North). Access to the Willard Bay State Park North begins in Box Elder County at Interstate Highway 15 and proceeds southwesterly on State Highway 315 a distance of 0.6 miles to the marina parking at the park and is under the jurisdiction of UDOT.

[~~(9)~~] (12) YUBA STATE PARK. Access to the Yuba State Park begins in Juab County at Interstate Highway 15 and proceeds southerly on

county road (L203) a distance of 4.1 miles to the pay gate at the park and is under the jurisdiction of Juab County.

CHAPTER 238
S. B. 318
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

JUSTICE COURT MODIFICATIONS

Chief Sponsor: D. Chris Buttars
House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill establishes that justice courts may not be created or certified by the Judicial Council unless the justice court operates a recording device in each court room.

Highlighted Provisions:

This bill:

- requires that when a justice court is created or certified by the Judicial Council, the justice court operate a digital audio recording device; and
- requires that the audio recordings of justice court proceedings be maintained for a minimum of one year.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-7-103, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78A-7-103 is amended to read:

78A-7-103. Requirements by Judicial Council for creating and certifying justice courts.

(1) The Judicial Council has the responsibility for promulgating and publishing minimum requirements both for the creation of new courts and the certification of existing courts. The council shall also review requests for waiver of the minimum requirements and may authorize the creation of a court by waiving compliance with minimum requirements or by allowing for an extension of time to meet the minimum requirements.

(2) Existing justice courts shall be recertified at the end of each four-year term if they continue to meet the minimum requirements for the establishment of a new court. Any existing court which does not meet the minimum requirements may request a review from the council, which may authorize the recertification of the court by waiving compliance with minimum requirements or by allowing for an extension of time to meet those requirements.

(3) Notwithstanding Subsections (1) and (2), the Judicial Council may only create or certify a justice court that, on or before July 1, 2012, records its proceedings with a digital audio recording device and maintains the audio recordings for a minimum of one year.

CHAPTER 239
S. B. 320
Passed March 10, 2011
Approved March 22, 2011
Effective May 10, 2011

DEPOSIT OF SEVERANCE TAX REVENUES INTO PERMANENT STATE TRUST FUND

Chief Sponsor: Lyle W. Hillyard
House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill modifies the oil and gas severance tax revenues to be deposited into the permanent state trust fund.

Highlighted Provisions:

This bill:

- modifies the oil and gas severance tax revenues to be deposited into the permanent state trust fund beginning with fiscal year 2011-12; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-9-305, as enacted by Laws of Utah 2008, Chapter 141

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

Section 1. Section 51-9-305 is amended to read:

51-9-305. Crediting of certain severance tax revenues to the permanent state trust fund.

(1) (a) After making the distributions of oil and gas severance tax revenues as required under Sections 59-5-116 and 59-5-119, the Division of Finance shall make the distributions required under Subsections (2) through (5).

(b) For purposes of this section, revenue collected from severance taxes on oil and gas imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, does not include revenue that is distributed under Section 59-5-116 or 59-5-119.

(2) (a) Beginning with fiscal year 2008-09 and ending with fiscal year 2010-11, if authorized by law, the Division of Finance shall credit to the permanent state trust fund all revenue collected in a fiscal year from severance taxes on oil and gas imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, that exceed $71,000,000.

(b) Beginning with fiscal year 2011-12, if authorized by law, the Division of Finance shall credit to the permanent state trust fund all revenue collected in a fiscal year from severance taxes on oil and gas imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, that exceed $77,000,000.

(3) Beginning with fiscal year 2008-09, if authorized by law, the Division of Finance shall credit to the permanent state trust fund all revenue collected in a fiscal year from severance taxes on mining imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, that exceed $27,600,000.

(4) The state treasurer shall invest and separately account for the earnings on funds that are deposited into the permanent state trust fund under this section.

(5) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and dividends earned annually on revenue from severance taxes that are deposited into the permanent state trust fund shall be deposited in the General Fund.

(b) Interest and dividends earned on revenue from severance taxes that are deposited in the General Fund pursuant to Subsection (5)(a) shall be credited to the Infrastructure and Economic Diversification Investment Account created in Section 51-9-303.

CHAPTER 240
H. B. 14
Passed February 10, 2011
Approved March 23, 2011
Effective May 10, 2011

CATASTROPHIC MENTAL HEALTH COVERAGE - SUNSET ACT

Chief Sponsor: James A. Dunnigan
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Insurance Code and the Legislative Oversight and Sunset Act to address catastrophic mental health coverage.

Highlighted Provisions:

This bill:

- removes a catastrophic mental health coverage provision from the Legislative Oversight and Sunset Act; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-625, as last amended by Laws of Utah 2010, Chapters 10 and 68
63I-1-231, as last amended by Laws of Utah 2010, Chapters 68 and 319

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

Section 1. Section 31A-22-625 is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, before reaching a maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on:

(A) episodic limits;

(B) inpatient or outpatient service limits; or

(C) maximum out-of-pocket limits.

(c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(d) (i) "Mental health condition" means a condition or disorder involving mental illness that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) a marital or family problem;

(B) a social, occupational, religious, or other social maladjustment;

(C) a conduct disorder;

(D) a chronic adjustment disorder;

(E) a psychosexual disorder;

(F) a chronic organic brain syndrome;

(G) a personality disorder;

(H) a specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment

restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-5, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition must be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility:

(A) licensed or otherwise authorized to provide mental health services pursuant to:

(I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

(B) that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of insurance policies that include:

(i) no mental health coverage;

(ii) 50/50 mental health coverage;

(iii) catastrophic mental health coverage; and

(iv) coverage that exceeds the minimum requirements of this section.

(7) This section may not be construed as discouraging or otherwise preventing an insurer from providing mental health coverage in connection with an individual insurance policy.

[~~(8) This section shall be repealed in accordance with Section 63I-1-231.~~]

Section 2. Section 63I-1-231 is amended to read:

63I-1-231. Repeal dates, Title 31A.

(1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2015.

(2) Section 31A-2-217, Coordination with other states, is repealed July 1, 2013.

[~~(3) Section 31A-22-625, Catastrophic coverage of mental health conditions, is repealed July 1, 2011.~~]

[~~(4)~~] (3) Chapter 42a, Utah Statewide Risk Adjuster Act, is repealed July 1, 2016.

CHAPTER 241
H. B. 20
Passed February 11, 2011
Approved March 23, 2011
Effective May 10, 2011

ACCIDENT RESPONSIBILITY AMENDMENTS

Chief Sponsor: Christopher N. Herrod
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code by amending provisions relating to accident responsibilities.

Highlighted Provisions:

This bill:

- provides definitions;
- clarifies that an operator of a vehicle who has reason to believe that the operator has been involved in an accident shall stop the vehicle at the scene of the accident and fulfill certain requirements;
- provides that if an operator of a vehicle has reason to believe that the operator has been involved in a motor vehicle accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with certain requirements;
- clarifies that a person is guilty of a class A misdemeanor if the person does not comply with the accident responsibility requirements and the accident resulted in injury to any person;
- clarifies that a person is guilty of a felony if the person does not comply with certain accident responsibility requirements and the accident resulted in serious bodily injury to a person or the death of a person; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-401, as last amended by Laws of Utah 2009, Chapter 115
41-6a-401.3, as last amended by Laws of Utah 2010, Chapter 128
41-6a-401.5, as last amended by Laws of Utah 2010, Chapter 128

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

Section 1. Section 41-6a-401 is amended to read:

41-6a-401. Accident involving property damage -- Duties of operator, occupant, and owner -- Exchange of information -- Notification of law enforcement -- Penalties.

(1) As used in this section, "reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.

[~~(1)~~] (2) (a) The operator of a vehicle who has reason to believe that the operator may have been involved in an accident resulting only in damage to another vehicle or other property:

(i) may move the vehicle as soon as possible off the roadway or freeway main lines, shoulders, medians, or adjacent areas to the nearest safe location on an exit ramp shoulder, a frontage road, the nearest suitable cross street, or other suitable location that does not obstruct traffic; and

(ii) shall remain at the scene of the accident or the location described in Subsection [~~(1)~~] (2)(a)(i) until the operator has fulfilled the requirements of this section.

(b) Moving a vehicle as required under Subsection [~~(1)~~] (2)(a)(i) does not affect the determination of fault for an accident.

(c) If the operator has reason to believe that the operator may have been involved in an accident resulting in damage to another vehicle or other property only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of this section.

[~~(2)~~] (3) Except as provided under Subsection [~~(5)~~] (6), if the vehicle or other property is operated, occupied, or attended by any person or if the owner of the vehicle or property is present, the operator of the vehicle involved in the accident shall:

(a) give to the persons involved:

(i) the operator's name, address, and the registration number of the vehicle being operated; and

(ii) the name of the insurance provider covering the vehicle being operated including the phone number of the agent or provider; and

(b) upon request and if available, exhibit the operator's license to:

(i) any investigating peace officer present;

(ii) the operator, occupant of, or person attending the vehicle or other property damaged in the accident; and

(iii) the owner of property damaged in the accident, if present.

[~~(3)~~] (4) The operator of a vehicle involved in an accident shall immediately and by the quickest means of communication available give notice or cause to give notice of the accident to the nearest office of a law enforcement agency if the accident resulted in property damage to an apparent extent of $1,500 or more.

[~~(4)~~] (5) Except as provided under Subsection [~~(5)~~] (6), if the vehicle or other property damaged in the accident is unattended, the operator of the vehicle involved in the accident shall:

(a) locate and notify the operator or owner of the vehicle or the owner of other property damaged in the accident of the operator's name, address, and

the registration number of the vehicle causing the damage; or

(b) attach securely in a conspicuous place on the vehicle or other property a written notice giving the operator's name, address, and the registration number of the vehicle causing the damage.

[~~(5)~~] (6) The operator of a vehicle that provides the information required under this section to an investigating peace officer at the scene of the accident is exempt from providing the information to other persons required under this section.

[~~(6)~~] (7) (a) A person who violates the provisions of Subsection [~~(1)~~] (2) is guilty of a class B misdemeanor.

(b) A person who violates the provision of Subsection [~~(4)~~] (5) is guilty of a class B misdemeanor.

Section 2. Section 41-6a-401.3 is amended to read:

41-6a-401.3. Accident involving injury -- Stop at accident -- Penalty.

(1) As used in this section[~~,~~]:

(a) "Reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.

(b) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(2) (a) The operator of a vehicle who has reason to believe that the operator may have been involved in an accident resulting in injury to a person shall:

[~~(a)~~] (i) immediately stop the vehicle at the scene of the accident or as close to it as possible without obstructing traffic more than is necessary; and

[~~(b)~~] (ii) remain at the scene of the accident until the operator has fulfilled the requirements of Section 41-6a-401.7.

(b) If the operator has reason to believe that the operator may have been involved in an accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of Section 41-6a-401.7.

(3) (a) Except as provided in Subsection (3)(b), a person who violates the provisions of Subsection (2):

(i) is guilty of a class A misdemeanor if the accident resulted in injury to any person; and

(ii) shall be fined not less than $750.

(b) A person who violates the provisions of Subsection (2):

(i) is guilty of a third degree felony if the accident resulted in serious bodily injury to a person; and

(ii) shall be fined not less than $750.

Section 3. Section 41-6a-401.5 is amended to read:

41-6a-401.5. Accident involving death -- Stop at accident -- Penalty.

(1) As used in this section, "reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.

[~~(1)~~] (2) (a) The operator of a vehicle who has reason to believe that the operator may have been involved in an accident resulting in the death of a person shall:

[~~(a)~~] (i) immediately stop the vehicle at the scene of the accident or as close to it as possible without obstructing traffic more than is necessary; and

[~~(b)~~] (ii) remain at the scene of the accident until the operator has fulfilled the requirements of Section 41-6a-401.7.

(b) If the operator has reason to believe that the operator may have been involved in an accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of Section 41-6a-401.7.

[~~(2)~~] (3) A person who violates the provisions of Subsection [~~(1)~~] (2) is guilty of a third degree felony and shall be fined not less than $750.

CHAPTER 242
H. B. 27
Passed February 4, 2011
Approved March 23, 2011
Effective May 10, 2011

WORKERS' COMPENSATION RATE FILINGS

Chief Sponsor: Todd E. Kiser
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Insurance Code to address workers' compensation rate filings.

Highlighted Provisions:

This bill:

- establishes procedures for workers' compensation insurance tiered rate filings.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
31A-19a-408, Utah Code Annotated 1953

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

Section 1. Section 31A-19a-408 is enacted to read:

31A-19a-408. Procedures for workers' compensation tiered rate filings.

(1) Notwithstanding Section 31A-19a-214 and subject to the other provisions of this section, a workers' compensation insurer may file with the commissioner a rate filing for workers' compensation insurance that provides for a plan with more than one rate tier for a single insurer or an insurer group with common ownership if the filing shows that:

(a) each tier is established on underwriting rules that are based on criteria that would lead to a logical distinguishing of potential risk; and

(b) supporting actuarial analysis or other information that shows a clear distinction between the following for each tier:

(i) expected losses and expenses; and

(ii) actual losses and expenses.

(2) A workers' compensation insurer shall file with the commissioner an update of the actuarial analysis or other information required under Subsection (1)(b) at least every three years.

(3) A workers' compensation insurer may apply underwriting expertise and judgment in the tier placement process, except that underwriting expertise and judgment shall:

(a) be applied in a prudent manner; and

(b) when applied, be fair, reasonable, and fully documented.

CHAPTER 243
H. B. 28
Passed February 23, 2011
Approved March 23, 2011
Effective May 10, 2011

PENALTIES FOR UNAUTHORIZED USE OF RECORDS

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Public Safety Code by amending provisions relating to the unauthorized use of certain records.

Highlighted Provisions:

This bill:

- provides that the Motor Vehicle Division shall disclose a protected record in certain circumstances;
- provides that the knowing or intentional unauthorized access, use, disclosure, or dissemination of records created or maintained by the Motor Vehicle Division, the Driver License Division, or the Criminal Investigations and Technical Services Division is a class B misdemeanor;
- provides that the director of the Motor Vehicle Division, the Driver License Division, the Utah Bureau of Criminal Identification, and the Commissioner of Public Safety shall be informed of the unauthorized use of certain records; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-1a-116, as last amended by Laws of Utah 2009, Chapter 183
53-3-109, as last amended by Laws of Utah 2009, Chapter 183
53-10-108, as last amended by Laws of Utah 2010, Chapter 58
53-10-111, as renumbered and amended by Laws of Utah 1998, Chapter 263

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

Section 1. Section 41-1a-116 is amended to read:

41-1a-116. Records -- Access to records -- Fees.

(1) (a) All motor vehicle title and registration records of the division are protected unless the division determines based upon a written request by the subject of the record that the record is public.

(b) In addition to the provisions of this section, access to all division records is permitted for all purposes described in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) (a) Access to public records is determined by Section 63G-2-201.

(b) A record designated as public under Subsection (1)(a) may be used for advertising or solicitation purposes.

(3) Access to protected records, except as provided in Subsection (4), is determined by Section 63G-2-202.

(4) (a) In addition to those persons granted access to protected records under Section 63G-2-202, the division [~~may~~] shall disclose a protected record to a licensed private investigator, holding a valid agency or registrant license, with a legitimate business need, a person with a bona fide security interest, or the owner of a mobile home park subject to Subsection (5), only upon receipt of a signed acknowledgment that the person receiving that protected record may not:

[~~(a)~~] (i) resell or disclose information from that record to any other person except as permitted in the federal Driver's Privacy Protection Act of 1994; or

[~~(b)~~] (ii) use information from that record for advertising or solicitation purposes.

(b) A legitimate business need under Subsection (4)(a) does not include the collection of a debt.

(5) The division may disclose the name or address, or both, of the lienholder or mobile home owner of record, or both of them, to the owner of a mobile home park, if all of the following conditions are met:

(a) a mobile home located within the mobile home park owner's park has been abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

(b) the mobile home park owner has conducted a reasonable search, but is unable to determine the name or address, or both, of the lienholder or mobile home owner of record; and

(c) the mobile home park owner has submitted a written statement to the division explaining the mobile home park owner's efforts to determine the name or address, or both, of the lienholder or mobile home owner of record before the mobile home park owner contacted the division.

(6) The division may provide protected information to a statistic gathering entity under Subsection (4) only in summary form.

(7) A person allowed access to protected records under Subsection (4) may request motor vehicle title or registration information from the division regarding any person, entity, or motor vehicle by submitting a written application on a form provided by the division.

(8) If a person regularly requests information for business purposes, the division may by rule allow the information requests to be made by telephone and fees as required under Subsection (9) charged to a division billing account to facilitate division service. The rules shall require that the:

(a) division determine if the nature of the business and the volume of requests merit the dissemination of the information by telephone;

(b) division determine if the credit rating of the requesting party justifies providing a billing account; and

(c) requestor submit to the division an application that includes names and signatures of persons authorized to request information by telephone and charge the fees to the billing account.

(9) (a) The division shall charge a reasonable search fee determined under Section 63J-1-504 for the research of each record requested.

(b) Fees may not be charged for furnishing information to persons necessary for their compliance with this chapter.

(c) Law enforcement agencies have access to division records free of charge.

(10) (a) It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created or maintained by the division or any information contained in a record created or maintained by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.

(b) A person who discovers or becomes aware of any unauthorized use of records created or maintained by the division shall inform the director of the unauthorized use.

Section 2. Section 53-3-109 is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The division may only disclose personal identifying information:

(i) when the division determines it is in the interest of the public safety to disclose the information; and

(ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(c) The division may disclose personal identifying information:

(i) to a licensed private investigator holding a valid agency license, with a legitimate business need;

(ii) to an insurer, insurance support organization, or a self-insured entity, or its agents, employees, or contractors that issues any motor vehicle insurance under Title 31A, Chapter 22, Part 3, Motor Vehicle Insurance, for use in connection with claims investigation activities, antifraud activities, rating, or underwriting for any person issued a license certificate under this chapter; or

(iii) to a depository institution as defined in Section 7-1-103 for use in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) (a) A person who receives personal identifying information shall be advised by the division that the person may not:

(i) disclose the personal identifying information from that record to any other person; or

(ii) use the personal identifying information from that record for advertising or solicitation purposes.

(b) Any use of personal identifying information by an insurer or insurance support organization, or by a self-insured entity or its agents, employees, or contractors not authorized by Subsection (1)(c)(ii) is:

(i) an unfair marketing practice under Section 31A-23a-402; or

(ii) an unfair claim settlement practice under Subsection 31A-26-303(3).

(3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing driving risk on the insurer's current motor vehicle insurance policyholders.

(b) The disclosure under Subsection (3)(a) shall:

(i) include the licensed driver's name, driver license number, date of birth, and an indication of whether the driver has had a moving traffic violation that is a reportable violation, as defined under Section 53-3-102 during the previous month;

(ii) be limited to the records of drivers who, at the time of the disclosure, are covered under a motor vehicle insurance policy of the insurer; and

(iii) be made under a contract with the insurer or a designee of an insurer.

(c) The contract under Subsection (3)(b)(iii) shall specify:

(i) the criteria for searching and compiling the driving records being requested;

(ii) the frequency of the disclosures;

(iii) the format of the disclosures, which may be in bulk electronic form; and

(iv) a reasonable charge for the driving record disclosures under this Subsection (3).

(4) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person;

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63J-1-504 for each document authenticated; and

(c) charge reasonable fees established in accordance with the procedures and requirements of Section 63J-1-504 for disclosing personal identifying information under Subsection (1)(c).

(5) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(6) (a) A driving record furnished under this section may only report on the driving record of a person for a period of 10 years.

(b) Subsection (6)(a) does not apply to court or law enforcement reports and to reports of commercial driver license violations.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to designate:

(a) what information shall be included in a report on the driving record of a person;

(b) the form of a report or copy of the report which may include electronic format;

(c) the form of a certified copy, as required under Section 53-3-216, which may include electronic format;

(d) the form of a signature required under this chapter which may include electronic format;

(e) the form of written request to the division required under this chapter which may include electronic format;

(f) the procedures, requirements, and formats for disclosing personal identifying information under Subsection (1)(c); and

(g) the procedures, requirements, and formats necessary for the implementation of Subsection (3).

(8) (a) It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created or maintained by the division or any information contained in a record created or maintained by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.

(b) A person who discovers or becomes aware of any unauthorized use of records created or maintained by the division shall inform the commissioner and the division director of the unauthorized use.

Section 3. Section 53-10-108 is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records -- Penalty for misuse of records.

(1) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; and

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

(f) (i) agencies and individuals as the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and

(ii) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees;

(g) a qualifying entity for employment background checks for their own employees and persons who have applied for employment with the qualifying entity; and

(h) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution pursuant to an agreement.

(2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data.

(3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must obtain a signed waiver from the person whose information is requested.

(b) The waiver must notify the signee:

(i) that a criminal history background check will be conducted;

(ii) who will see the information; and

(iii) how the information will be used.

(c) Information received by a qualifying entity under Subsection (1)(g) may only be:

(i) available to persons involved in the hiring or background investigation of the employee; and

(ii) used for the purpose of assisting in making an employment or promotion decision.

(d) A person who disseminates or uses information obtained from the division under Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to any penalties provided under this section, is subject to civil liability.

(e) A qualifying entity that obtains information under Subsection (1)(g) shall provide the employee or employment applicant an opportunity to:

(i) review the information received as provided under Subsection (8); and

(ii) respond to any information received.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement this Subsection (3).

(g) (i) The applicant fingerprint card fee under Subsection (1)(g) is $20.

(ii) The name check fee under Subsection (1)(g) is $15.

(iii) These fees remain in effect until changed by the division through the process under Section 63J-1-504.

(iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.

(h) The division or its employees are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with the contents of information disseminated under Subsection (1)(g).

(4) (a) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated, except under Subsection (4)(b).

(b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be provided by the agency to the person who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

(5) If an individual has no prior criminal convictions, criminal history record information contained in the division's computerized criminal history files may not include arrest or disposition data concerning an individual who has been acquitted, the person's charges dismissed, or when no complaint against the person has been filed.

(6) (a) This section does not preclude the use of the division's central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(7) Direct access through remote computer terminals to criminal history record information in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(8) (a) The commissioner shall establish procedures to allow an individual right of access to review and receive a copy of the individual's criminal history report.

(b) A processing fee for the right of access service, including obtaining a copy of the individual's criminal history report under Subsection (8)(a) is $15. This fee remains in effect until changed by the commissioner through the process under Section 63J-1-504.

(c) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(9) The private security agencies as provided in Subsection (1)(f)(ii):

(a) shall be charged for access; and

(b) shall be registered with the division according to rules made by the division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(10) Before providing information requested under this section, the division shall give priority to criminal justice agencies needs.

[~~(11) (a) Misuse of access to criminal history record information is a class B misdemeanor.~~]

[~~(b) The commissioner shall be informed of the misuse.~~]

(11) (a) It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created, maintained, or to which access is granted by the division or any information contained in a record created, maintained, or to which access is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.

(b) A person who discovers or becomes aware of any unauthorized use of records created or maintained, or to which access is granted by the division shall inform the commissioner and the director of the Utah Bureau of Criminal Identification of the unauthorized use.

Section 4. Section 53-10-111 is amended to read:

53-10-111. Refusal to provide information -- False information -- Misdemeanor.

It is a class B misdemeanor for a person to:

(1) neglect or refuse to provide, or willfully withhold any information under this part;

(2) willfully provide false information;

(3) willfully fail to do or perform any act required under this part;

(4) hinder or prevent another from doing an act required under this part; or

(5) willfully remove, destroy, alter, mutilate, or disclose the contents of any file or record [~~of~~] created or maintained, or to which access is granted by the division unless authorized by and in compliance with procedures established by the [~~commissioner~~] division.

CHAPTER 244
H. B. 29
Passed February 4, 2011
Approved March 23, 2011
Effective May 10, 2011

BUSINESS ENTITY MERGERS

Chief Sponsor: James A. Dunnigan
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies the Utah Revised Business Corporation Act to address mergers.

Highlighted Provisions:

This bill:

- clarifies that a corporation may merge with other business entities; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-1101, as last amended by Laws of Utah 2010, Chapter 378
16-10a-1107, as last amended by Laws of Utah 2008, Chapter 364

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

Section 1. Section 16-10a-1101 is amended to read:

16-10a-1101. Merger.

(1) [~~One or more domestic corporations~~] A domestic corporation may merge into another [~~domestic corporation~~] entity if:

(a) the board of directors of [~~each~~] the domestic corporation adopts and its shareholders, if required by Section 16-10a-1103, approve the plan of merger[~~.~~]; and

(b) any other entity that plans to merge approves the plan of merger as provided by the statutes governing the entity.

(2) The plan of merger referred to in Subsection (1) shall set forth:

(a) the name of each [~~corporation~~] entity planning to merge and the name of the surviving [~~corporation~~] entity into which each other [~~corporation~~] entity plans to merge;

(b) the terms and conditions of the merger;

(c) the manner and basis of converting the [~~shares of each corporation into shares,~~] ownership interests in each entity, in whole or part, into:

(i) ownership interests, obligations, or other securities of the surviving [~~or any other corporation or into~~] entity or another entity; or

(ii) cash or other property [~~in whole or part~~]; and

(d) any amendments to the articles of incorporation or organization of the surviving [~~corporation~~] entity to be effected by the merger.

(3) The plan of merger may set forth other provisions relating to the merger.

Section 2. Section 16-10a-1107 is amended to read:

16-10a-1107. Merger or share exchange with foreign corporations.

(1) [~~One or more domestic corporations may merge~~] A domestic corporation may merge with a foreign entity or enter into a share exchange with [~~one or more foreign corporations~~] a foreign corporation if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law [~~each~~] the foreign [~~corporation~~] entity is incorporated or organized and [~~each~~] the foreign [~~corporation~~] entity complies with that law in effecting the merger;

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with Section 16-10a-1105 if it is the surviving corporation of the merger or the acquiring corporation of the share exchange, and provides, in addition to the information required by Section 16-10a-1105, the address of its principal office; and

(d) [~~each~~] the domestic corporation complies with:

(i) the applicable provisions of Sections 16-10a-1101 through 16-10a-1104; and[~~,~~]

(ii) if it is the surviving corporation of the merger [~~with~~], Section 16-10a-1105.

(2) Upon the merger or share exchange taking effect, the surviving foreign [~~corporation~~] entity of a merger and the acquiring foreign corporation of a share exchange shall either:

(a) agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in Section 16-17-301;

(b) promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Part 13, Dissenters' Rights; and

(c) comply with Part 15, Authority of Foreign Corporation to Transact Business, if it is to transact business in this state.

(3) Service effected pursuant to Subsection (2) is perfected at the earliest of:

(a) the date the foreign [~~corporation~~] entity receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the foreign [~~corporation~~] entity; or

(c) five days after mailing.

(4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign [~~corporation~~] entity of a merger or an acquiring foreign corporation in a share exchange.

(5) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange of shares or otherwise.

CHAPTER 245
H. B. 30
Passed February 4, 2011
Approved March 23, 2011
Effective May 10, 2011

ELECTION OFFICIALS' FUNDS

Chief Sponsor: Neal B. Hendrickson
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill repeals the Election Officials' Funds.

Highlighted Provisions:

This bill repeals the Election Officials' Funds, which provides for reporting of money set aside for the use of an elected official.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

REPEALS:

52-5-101, as renumbered and amended by Laws of Utah 2008, Chapter 382
52-5-102, as renumbered and amended by Laws of Utah 2008, Chapter 382
52-5-201, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Repealer.

This bill repeals:

Section 52-5-101, Title.

Section 52-5-102, Definitions.

Section 52-5-201, Reporting of funds -- Reports are public records.

CHAPTER 246
H. B. 45
Passed February 18, 2011
Approved March 23, 2011
Effective May 10, 2011

VEHICLE IMPOUND AMENDMENTS

Chief Sponsor: Jeremy A. Peterson
Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:
This bill modifies the Motor Vehicle Act by amending provisions relating to circumstances where a peace officer is permitted to seize a vehicle, vessel, or outboard motor.

Highlighted Provisions:
This bill:

- provides that a peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:
  - that the division or the peace officer has reason to believe has been involved in an accident involving property damage, injury, or death; and
  - whose operator did not remain at the scene of the accident until the operator fulfilled certain requirements; and
- makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:

AMENDS:
41-1a-1101, as last amended by Laws of Utah 2008, Chapters 164 and 382

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

Section 1. Section 41-1a-1101 is amended to read:

41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.

(1) (a) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

(i) that the division or the peace officer has reason to believe has been stolen;

(ii) on which any identification number has been defaced, altered, or obliterated;

(iii) that has been abandoned in accordance with Section 41-6a-1408;

(iv) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days;

(v) that is placed on the water with improper registration; [~~or~~]

(vi) that is being operated on a highway:

(A) with registration that has been expired for more than three months;

(B) having never been properly registered by the current owner;

(C) with registration that is suspended or revoked; or

(D) subject to the restriction in Subsection (1)(b), without owner's or operator's security in effect for the vehicle as required under Section 41-12a-301[~~.~~]; or

(vii) (A) that the division or the peace officer has reason to believe has been involved in an accident described in Section 41-6a-401, 41-6a-401.3, or 41-6a-401.5; and

(B) whose operator did not remain at the scene of the accident until the operator fulfilled the requirements described in Section 41-6a-401 or 41-6a-401.7.

(b) The division or any peace officer may not seize and take possession of a vehicle under Subsection (1)(a)(vi)(D) if the operator of the vehicle is not carrying evidence of owner's or operator's security as defined in Section 41-12a-303.2 in the vehicle unless the division or peace officer verifies that owner's or operator's security is not in effect for the vehicle through the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803.

(2) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this section shall comply with the provisions of Section 41-6a-1406.

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules setting standards for public garages, impound lots, and impound yards that may be used by peace officers and the division.

(b) The standards shall be equitable, reasonable, and unrestrictive as to the number of public garages, impound lots, or impound yards per geographical area.

(5) (a) Except as provided under Subsection (5)(b), a person may not operate or allow to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated under this part without prior written permission of the owner of the vehicle.

(b) Incidental and necessary operation of a vehicle to move the vehicle from one parking space to another within the facility and that is necessary for the normal management of the facility is not prohibited under Subsection (5)(a).

(6) A person who violates the provisions of Subsection (5) is guilty of a class C misdemeanor.

(7) The division or the peace officer who seizes a vehicle shall record the mileage shown on the vehicle's odometer at the time of seizure, if:

(a) the vehicle is equipped with an odometer; and

(b) the odometer reading is accessible to the division or the peace officer.

CHAPTER 247
H. B. 51
Passed March 7, 2011
Approved March 23, 2011
Effective May 10, 2011

SCHOOL AND INSTITUTIONAL TRUST LANDS

Chief Sponsor: Roger E. Barrus
Senate Sponsor: Stephen H. Urquhart
Cosponsors: Johnny Anderson
Patrice M. Arent
Jim Bird
Joel K. Briscoe
Melvin R. Brown
David G. Butterfield
Rebecca Chavez-Houck
LaVar Christensen
David Clark
Brad L. Dee
Jack R. Draxler
Rebecca P. Edwards
Julie Fisher
Gage Froerer
Brad J. Galvez
Francis D. Gibson
Keith Grover
Stephen G. Handy
Lynn N. Hemingway
Neal B. Hendrickson
Christopher N. Herrod
Eric K. Hutchings
Don L. Ipson
Ken Ivory
Brian S. King
Todd E. Kiser
Bradley G. Last
David Litvack
Kay L. McIff
Ronda Rudd Menlove
Michael T. Morley
Carol Spackman Moss
Jim Nielson
Michael E. Noel
Curtis Oda
Patrick Painter
Lee B. Perry
Dixon M. Pitcher
Marie H. Poulson
Paul Ray
Douglas Sagers
Stephen E. Sandstrom
Dean Sanpei
Kenneth W. Sumsion
Christine F. Watkins
R. Curt Webb
Mark A. Wheatley
Ryan D. Wilcox
Larry B. Wiley
Brad R. Wilson
Carl Wimmer
Bill Wright

LONG TITLE

General Description:

This bill modifies provisions of the School and Institutional Trust Lands Management Act.

Highlighted Provisions:

This bill:

- deletes obsolete language;
- exempts the School and Institutional Trust Lands Administration (administration) from the petition process provisions of the Utah Administrative Rulemaking Act;
- exempts the Administration from fee agency provisions for certain fees in the Budgetary Procedures Act;
- makes modifications to School and Institutional Trust Lands Board of Trustees (board) terms and replacement appointments;
- specifically grants the director authority to acquire and dispose of lands and assets;
- modifies the judicial review process of the board and administration;
- allows the administration to request financial information from certain providers;
- modifies the mining claim administration fee;
- authorizes the director to withdraw lands from surface occupancy or use when there is a potential for resource degradation;
- modifies the requirements that a person who degrades trust lands must meet in restoring the land;
- requires the Permanent Community Impact Fund Board to consider recommendations from the administration when awarding certain grants;
- allows a lease or permit which includes an option to purchase at a future date to be negotiated in a method other than through a public competitive process; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-307, as last amended by Laws of Utah 2008, Chapter 382
53C-1-201, as last amended by Laws of Utah 2010, Chapter 218
53C-1-202, as last amended by Laws of Utah 2008, Chapter 382
53C-1-203, as last amended by Laws of Utah 2010, Chapter 286
53C-1-204, as last amended by Laws of Utah 2000, Chapter 237
53C-1-302, as last amended by Laws of Utah 1997, Chapter 126
53C-1-303, as last amended by Laws of Utah 2004, Chapter 63
53C-1-304, as last amended by Laws of Utah 2008, Chapter 382
53C-2-102, as last amended by Laws of Utah 2005, Chapter 67
53C-2-103, as enacted by Laws of Utah 1994, Chapter 294

53C-2-104, as last amended by Laws of Utah 2003, Chapter 192
53C-2-105, as enacted by Laws of Utah 2003, Chapter 192
53C-2-301, as last amended by Laws of Utah 1997, Chapter 72
53C-2-404, as enacted by Laws of Utah 1994, Chapter 294
53C-2-407, as last amended by Laws of Utah 2005, Chapter 39
53C-3-101, as last amended by Laws of Utah 2004, Chapter 349
53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262
53C-4-101, as last amended by Laws of Utah 1997, Chapter 126
53C-4-102, as last amended by Laws of Utah 2004, Chapter 40
53C-4-201, as last amended by Laws of Utah 1995, Chapter 299
53C-4-301, as last amended by Laws of Utah 2004, Chapter 40
63J-1-504, as last amended by Laws of Utah 2010, Chapter 146
63L-2-201, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 9-4-307 is amended to read:

9-4-307. Impact fund administered by impact board -- Eligibility for assistance -- Review by board -- Administration costs -- Annual report.

(1) (a) The impact board shall:

(i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;

(ii) determine provisions for repayment of loans; [~~and~~]

(iii) establish criteria for determining eligibility for assistance under this part[~~.~~]; and

(iv) consider recommendations from the School and Institutional Trust Lands Administration when awarding a grant described in Subsection 9-4-303(6).

(b) (i) Criteria for awarding loans or grants made from funds described in Subsection 9-4-303(5) shall be consistent with Subsection 9-4-303(5).

(ii) Criteria for awarding grants made from funds described in Subsection 9-4-303(2)(c) shall be consistent with Subsection 9-4-303(6).

(c) In order to receive assistance under this part, subdivisions and interlocal agencies shall submit formal applications containing the information that the impact board requires.

(2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:

(a) the subdivision's or interlocal agency's current mineral lease production;

(b) the feasibility of the actual development of a resource that may impact the subdivision or interlocal agency directly or indirectly;

(c) current taxes being paid by the subdivision's or interlocal agency's residents;

(d) the borrowing capacity of the subdivision or interlocal agency, its ability and willingness to sell bonds or other securities in the open market, and its current and authorized indebtedness;

(e) all possible additional sources of state and local revenue, including utility user charges;

(f) the availability of federal assistance funds;

(g) probable growth of population due to actual or prospective natural resource development in an area;

(h) existing public facilities and services;

(i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and

(j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development Act, or otherwise.

(3) The impact board may not fund any education project that could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.

(4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.

(5) The impact board shall:

(a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances that the impact board considers to be necessary to ensure that the proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and

(b) ensure that each loan specifies the terms for repayment and is evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.

(6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.

(7) The department shall make an annual report to the Legislature concerning the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

Section 2. Section 53C-1-201 is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(i) the changes in business opportunities affecting the assets of the trust;

(ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63G, Chapter 6, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

[~~(f) (i) The board and director shall review the exceptions under this Subsection (3) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual general session.~~]

[~~(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.~~]

(f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to the fee agency requirements of Section 63J-1-504.

(ii) The following fees of the administration are subject to the requirements of Section 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures [~~for the development of~~] and other transactions involving trust lands and minerals approved [~~by the board~~] under Sections 53C-1-303 and 53C-2-401, the administration, with board approval, may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section 48-2c-102.

Section 3. Section 53C-1-202 is amended to read:

53C-1-202. Board of trustees membership -- Nomination list -- Qualifications -- Terms -- Replacement -- Chair -- Quorum.

(1) There is established the School and Institutional Trust Lands Board of Trustees.

(2) The board shall consist of seven members appointed on a nonpartisan basis by the governor with the consent of the Senate [~~for nonconsecutive six-year terms~~].

[~~(3) (a) Of the initial appointments to the board, the governor shall appoint one member to serve a six-year term, one member to serve a five-year term, one member to serve a four-year term, one member to serve a three-year term, one member to serve a two-year term, and one member to serve a one-year term.~~]

(3) (a) Except for the appointment made pursuant to Subsection (5), all appointments to the board shall be for a nonconsecutive term of six years, or until a replacement has been appointed and confirmed pursuant to this section.

(b) [~~All subsequent appointments shall be for a term of six years, except if~~] If a vacancy occurs, the governor shall appoint a replacement, following the procedures set forth in Subsections (2), (4), (5), and (6), to fill the unexpired term.

(c) Any member of the board who has served less than six years upon the expiration of that member's term is eligible for a consecutive reappointment.

[~~(d) Neither the term provision in Subsection (2) nor Subsection (3) applies to an appointment made under Subsection (5).~~]

(4) (a) The governor shall select six of the seven appointees to the board from a nomination list of at least two candidates for each position or vacancy submitted pursuant to Section 53C-1-203.

(b) The governor may request an additional nomination list of at least two candidates from the nominating committee if the initial list of candidates for a given position is unacceptable.

(c) (i) If the governor fails to select an appointee within 60 days after receipt of the initial list or within 60 days after the receipt of an additional list, the nominating committee shall make an interim appointment by majority vote.

(ii) The interim appointee shall serve until the matter is resolved by the committee and the governor or until replaced pursuant to this chapter.

(5) (a) The governor may appoint one member without requiring a nomination list.

(b) The member appointed under Subsection (5)(a) serves at the pleasure of the governor.

(6) (a) Each board candidate shall possess outstanding professional qualifications pertinent to the purposes and activities of the trust.

(b) The board shall represent the following areas of expertise:

(i) nonrenewable resource management or development;

(ii) renewable resource management or development; and

(iii) real estate.

(c) Other qualifications which are pertinent for membership to the board are expertise in any of the following areas:

(i) business;

(ii) investment banking;

(iii) finance;

(iv) trust administration;

(v) asset management; and

(vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i) through (v).

(7) The board of trustees shall select a chair and vice chair from its membership.

(8) Before assuming a position on the board, each member shall take an oath of office.

(9) Four members of the board constitute a quorum for the transaction of business.

(10) The governor or five board members may, for cause, remove a member of the board.

[~~(11) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.~~]

Section 4. Section 53C-1-203 is amended to read:

53C-1-203. Board of trustees nominating committee -- Composition -- Responsibilities -- Per diem and expenses.

(1) There is established an 11 member board of trustees nominating committee.

(2) (a) The State Board of Education shall appoint five members to the nominating committee from different geographical areas of the state.

(b) The governor shall appoint five members to the nominating committee as follows:

(i) one individual from a nomination list of at least two names of individuals knowledgeable about institutional trust lands submitted by the University of Utah and Utah State University on an alternating basis every four years;

(ii) one individual from a nomination list of at least two names submitted by the livestock industry;

(iii) one individual from a nomination list of at least two names submitted by the Utah Petroleum Association;

(iv) one individual from a nomination list of at least two names submitted by the Utah Mining Association; and

(v) one individual from a nomination list of at least two names submitted by the executive director of the Department of Natural Resources after consultation with statewide wildlife and conservation organizations.

(c) The president of the Utah Association of Counties shall designate the chair of the Public Lands Steering Committee, who must be an elected county commissioner or councilor, to serve as the eleventh member of the nominating committee.

(3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the state board and the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The nominating committee shall select a chair and vice chair from its membership by majority vote.

(5) (a) The nominating committee shall nominate at least two candidates for each position or vacancy which occurs on the board of trustees except for the governor's appointee under Subsection 53C-1-202(5).

(b) The nominations shall be by majority vote of the committee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 5. Section 53C-1-204 is amended to read:

53C-1-204. Policies established by board -- Director.

(1) (a) The board shall establish policies for the management of the School and Institutional Trust Lands Administration.

(b) The policies shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and state law;

(ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;

(iii) require the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets;

(iv) seek to optimize trust land revenues and increase the value of trust land holdings consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains;

(v) maintain the integrity of the trust and prevent the misapplication of its lands and its revenues; and

(vi) have regard for and seek General Fund appropriation compensation for the general public's use of natural and cultural resources consistent with the duties of the administration as trustee for the beneficiaries.

(2) The board shall ensure that the administration is managed according to law.

(3) The board shall establish due process procedures governing adjudicative proceedings conducted by the board and the administration.

(4) The board and the director shall recommend to the governor and the Legislature any necessary or desirable changes in statutes relating to the trust or their trust responsibilities.

[~~(5) Policies adopted by the Board of State Lands and Forestry prior to the effective date of this act regarding school and institutional trust lands, shall remain in effect until amended or repealed by the board.~~]

[~~(6)~~] (5) The board shall develop policies for the long-term benefit of the trust utilizing the broad discretion and power granted to it in this title.

[~~(7)~~] (6) (a) (i) On at least three occasions during each calendar year and in cooperation with the director, the board shall consult with an advisory committee consisting of five county commissioners appointed by the Utah Association of Counties concerning the impact of trust land management practices on rural economies.

(ii) The director shall notify the chair of the committee prior to any proposed board actions. At the request of the committee and prior to taking the proposed action, the board shall meet with the committee at the next scheduled board meeting.

(b) The association shall appoint the commissioners from five different counties based on

such factors as a county's total acreage of trust lands, the revenues generated from trust lands in the county, and the potential for economic development of trust lands within the county.

(c) The advisory committee may request additional consultations it considers necessary or appropriate, to be scheduled within a reasonable time after receipt of the request by the administration.

[~~(8)~~] (7) The board shall utilize the services of the attorney general as provided in Section 53C-1-305.

[~~(9)~~] (8) The board may:

(a) (i) establish advisory committees to advise the board, director, or administration on policies affecting the management of the trust, and pay the compensation and travel expenses in accordance with rules adopted by the Division of Finance; and

(ii) after conferring with the director, hire consultants to advise the board, director, or administration on issues affecting the management of the trust, and pay compensation to the consultants from money appropriated for that purpose;

(b) with the consent of the state risk manager, authorize the director to manage lands or interests in lands held by any other public or private party, if:

(i) all management costs are compensated by the parties;

(ii) there is a commensurate return to the beneficiaries; and

(iii) the additional responsibilities do not detract from the administration's responsibilities and its duty of undivided loyalty to the beneficiaries;

(c) issue subpoenas or authorize a hearing officer to issue subpoenas, to compel the attendance of witnesses and the production of documents in adjudicative proceedings authorized by law and administer oaths in the performance of official duties; and

(d) submit in writing to the director a request for responses, to be made within a reasonable time, to questions concerning policies and practices affecting the management of the trust.

[~~(10)~~] (9) Board members shall be given access to all administration records and personnel consistent with law and as necessary to permit the board to accomplish its responsibilities to ensure that the administration is in full compliance with applicable policies and law.

Section 6. Section 53C-1-302 is amended to read:

53C-1-302. Management of the administration -- Trust responsibilities.

(1) (a) The director has broad authority to:

(i) manage the School and Institutional Trust Lands Administration in fulfillment of its purpose; [~~and~~]

(ii) establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees[~~.~~]; and

(iii) acquire and dispose of lands and assets in accordance with law.

(b) The procedures and rules shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and policies of the board;

(ii) reflect undivided loyalty to the beneficiaries consistent with the director's fiduciary duties and responsibilities;

(iii) subject to Subsection (2), obtain the optimum values from use of trust lands and revenues for the trust beneficiaries, including the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets; and

(iv) be broadly construed to grant the board, director, and administration full discretionary authority to manage, maintain, or dispose of trust assets in the manner they consider most favorable to the beneficiaries.

(2) The director shall seek to optimize trust land revenues consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains.

(3) The director shall maintain the integrity of the trust and prevent, through prudent management, the misapplication of its lands and revenues.

Section 7. Section 53C-1-303 is amended to read:

53C-1-303. Responsibilities of director -- Budget review -- Legal counsel -- Contract for services.

(1) In carrying out the policies of the board of trustees and in establishing procedures and rules the director shall:

(a) take an oath of office before assuming any duties as the director;

(b) adopt procedures and rules necessary for the proper administration of matters entrusted to the director by state law and board policy;

(c) submit to the board for its review and concurrence on any rules necessary for the proper management of matters entrusted to the administration;

(d) faithfully manage the administration under the policies established by the board;

(e) submit to the board [~~and~~] for public inspection [~~by October 1 of each year,~~] an annual management budget and financial plan for operations of the administration and, after approval by the board, submit the budget to the governor;

(f) direct and control the budget expenditures as finally authorized and appropriated;

(g) establish job descriptions and employ, within the limitation of the budget, staff necessary to accomplish the purposes of the office subject to Section 53C-1-201;

(h) establish, in accordance with generally accepted principles of fund accounting, a system to identify and account for the assets and vested interests of each beneficiary;

(i) maintain appropriate records of trust activities to enable auditors appointed by appropriate state agencies or the board to conduct periodic audits of trust activities;

(j) provide that all leases, contracts, and agreements be submitted to legal counsel for review of compliance with applicable law and fiduciary duties prior to execution and utilize the services of the attorney general as provided in Section 53C-1-305;

(k) keep the board, beneficiaries, governor, Legislature, and the public informed about the work of the director and administration by reporting to the board in a public meeting at least once during each calendar quarter; and

(l) respond in writing within a reasonable time to a request by the board for responses to questions on policies and practices affecting the management of the trust.

[~~(2) Procedures and rules adopted by the Division of State Lands and Forestry as they relate to trust lands prior to the effective date of this act remain in effect until amended or repealed by the director.~~]

[~~(3)~~] (2) The administration shall be the named party in substitution of the Division of State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.

[~~(4)~~] (3) The director may:

(a) with the consent of the state risk manager and the board, manage lands or interests in lands held by any other public or private party pursuant to policies established by the board and may make rules to implement these board policies;

(b) sue or be sued as the director of school and institutional trust lands;

(c) contract with other public agencies for personnel management services;

(d) contract with any public or private entity to make improvements to or upon trust lands and to carry out any of the responsibilities of the office, so long as the contract requires strict adherence to trust management principles, applicable law and regulation, and is subject to immediate suspension or termination for cause; and

(e) with the approval of the board enter into joint ventures and other business arrangements consistent with the purposes of the trust.

[~~(5)~~] (4) Any application or bid required for the lease, permitting, or sale of lands in a competitive process or any request for review pursuant to Section 53C-1-304 shall be considered filed or made on the date received by the appropriate administrative office, whether transmitted by United States mail or in any other manner.

Section 8. Section 53C-1-304 is amended to read:

53C-1-304. Rules to ensure procedural due process -- Board review of director action -- Judicial review.

(1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, [~~and~~] or the administration.

(2) (a) [~~An~~] Except as provided in Subsection (2)(b), an aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.

(b) Final actions by the director or administration to lease, sell, or exchange specific real property or other trust assets are not subject to administrative review.

(3) (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.

(b) The board shall consider the recommendations of the examiner in making decisions.

(4) (a) The board shall uphold the decision of the director or the administration unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules.

(b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review.

(5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.

Section 9. Section 53C-2-102 is amended to read:

53C-2-102. Information to be furnished by provider -- Director to adopt confidential information rules.

(1) As used in this section, "provider" means a prospective applicant, applicant, partner, or lessee.

(2) (a) The administration may require a provider to furnish any information necessary to carry out the duties of this title, including financial information, geological and mine maps, well logs, and assays.

(b) Any information submitted to the administration which the provider and the director agree in writing is of a proprietary nature shall be kept confidential and may not be released without written permission from the provider.

(3) The director shall adopt rules under which the administration may retain, without disclosure to third parties, information including that received under Subsection (2) which the provider and the director agree is of a protected or proprietary nature, unless the information is required by federal or state law to be of a nonproprietary nature.

Section 10. Section 53C-2-103 is amended to read:

53C-2-103. Director's authority to examine records and inspect property.

[~~(1)~~] For the purpose of determining compliance with any rule or any performance or payment obligation under a lease, permit, or contract, the director may, at reasonable times, places, and intervals:

[~~(a)~~] (1) require that the lessee, permittee, or contractor provide any pertinent books, records, or other documents of the lessee, permittee, or contractor; [~~or~~] and

[~~(b)~~] (2) inspect the property acquired, used, or developed under the lease, permit, or contract after reasonable notice or as provided in the lease, permit, or contract.

[~~(2) Nothing in this section shall be construed to limit or invalidate audits conducted by the Division of State Lands and Forestry prior to the effective date of this act.~~]

Section 11. Section 53C-2-104 is amended to read:

53C-2-104. Preexisting federal mining claims on trust lands -- Filing of notice -- Conclusive evidence of abandonment.

(1) The Legislature recognizes the importance of having an effective state filing system for unpatented federal mining claims located on trust lands prior to the state's acquisition of title that would allow the state to determine the extent of preexisting unpatented mining claims on those lands and eliminate the cloud on the state's title created by abandoned unpatented mining claims, while preserving the rights of owners of valid preexisting unpatented mining claims located on those lands.

(2) Annually on or before December 31, each owner of an unpatented lode mining claim, placer mining claim, mill site claim, or tunnel site claim located pursuant to the general mining laws of the United States on lands now owned of record by the state in trust for the common schools or other beneficiary institutions shall file with the administration a notice as prescribed by Subsection (3).

(3) (a) The initial notice required by Subsection (2) that is filed by a claimant shall include:

(i) a statement of the owner's intention to hold or abandon the claim;

(ii) a brief description of the type and nature of the claim;

(iii) the date the claim was located, and the date the claim was filed of record in county and federal records;

(iv) a copy of the official record of the notice of location or certificate of location of the claim; and

(v) a legal description of the claim, by legal subdivision or metes and bounds description, sufficient to locate the claimed lands on the ground.

(b) Each subsequent notice required by Subsection (2) shall include:

(i) the name of the claim; and

(ii) a statement of the owner's intention to hold or abandon the claim.

(4) (a) The administration shall note the existence of all claims for which notices have been filed in the central index of all trust lands required under Section 53C-2-101.

(b) The administration may impose a reasonable filing fee as a condition for accepting the required notices, not to exceed [~~$50~~] $100 per claim, to defray the administrative costs of maintaining an index of claims.

(5) (a) Failure to file the notice required by this section constitutes an abandonment of the claim by the owner.

(b) Filing of the required notice by one owner of a claim in which multiple persons own or claim interests fulfills the filing requirements of this section.

(6) Filing of a notice under this section does not make valid a claim which is otherwise invalid under other applicable law.

(7) Acquisition of rights to extract minerals underlying trust lands is governed by Part 4 [~~of this chapter~~], Mineral Leases.

(8) This section does not waive any fees, filings, or other requirements imposed by federal law.

Section 12. Section 53C-2-105 is amended to read:

53C-2-105. Withdrawal of trust lands from leasing or other dispositions.

[~~(1)~~] The director may at any time withdraw trust lands from:

(1) applications for leasing, permitting, sale, or other disposition of any nature upon a finding that the interests of the trust would best be served through withdrawal[~~.~~]; or

(2) surface occupancy or use upon a finding that continued use would cause resource degradation.

[~~(2) Any withdrawal which is in force on May 5, 2003, shall continue in force until revoked by the director.~~]

Section 13. Section 53C-2-301 is amended to read:

53C-2-301. Trespassing on trust lands -- Penalties.

(1) A person is liable for the civil damages prescribed in Subsection (2) and, unless a greater penalty is prescribed in another part of the law, is guilty of a class B misdemeanor if the person, without written authorization from the director:

(a) removes, extracts, uses, consumes, or destroys any mineral resource, gravel, sand, soil, vegetation, water resource, or improvement on trust lands;

(b) grazes livestock on trust lands;

(c) uses, occupies, or constructs improvements or structures on trust lands;

(d) uses or occupies trust lands for more than 30 days after the cancellation or expiration of written authorization;

(e) knowingly and willfully uses trust lands for commercial gain;

(f) appropriates, alters, injures, or destroys any improvement or any historical, prehistorical, archaeological, or paleontological resource on trust lands;

(g) trespasses upon, uses, commits waste, dumps refuse, or occupies trust land;

(h) interferes with the activities of an employee or agent of the administration on trust lands; or

(i) interferes with activities of a lessee or other person which have been authorized by the administration.

(2) A person who commits any act described in Subsection (1) is liable for damages in the amount of whichever of the following is greatest:

(a) three times the value at the point of sale of the mineral or other resource removed, destroyed, or extracted;

(b) three times the amount of damage committed;

(c) three times the cost to cure the damage;

[~~(c)~~] (d) three times the value of any losses suffered as a result of interference with authorized activities; or

[~~(d)~~] (e) three times the consideration which would have been charged by the director for use of the land during the period of trespass[~~, whichever is greater~~].

(3) In addition to the damages described in Subsection (2), a person found guilty of a criminal act under Subsection (1) is subject to the penalties provided in Title 76, Chapter 3, Punishments.

(4) The director shall deposit money collected under this section in the fund in which like revenues from that land would be deposited.

(5) The director may award a portion of any of the damages collected under this section in excess of actual damages to the general fund of the county in which the trespass occurred as a reward for county assistance in the apprehension and prosecution of the trespassing party.

Section 14. Section 53C-2-404 is amended to read:

53C-2-404. Applicants for mineral leases -- Qualifications.

Applicants for mineral leases must, throughout the application period and throughout the duration of the lease, be in full compliance with all of the laws of the state as to qualification to do business within the state and must not be in default under those laws or the rules of the administration.

Section 15. Section 53C-2-407 is amended to read:

53C-2-407. Mineral lease application procedures.

(1) Lands that are not encumbered by a current mineral lease for the same resource, a withdrawal order, or other rule of the director prohibiting the lease of the lands, may be offered for lease as provided in this section or may, with board approval, be committed to another contractual arrangement under Subsection 53C-2-401(1)(d).

(2) (a) A notice of the land available for leasing shall be posted in the administration's office.

(b) The notice shall:

(i) describe the land;

(ii) indicate what mineral interest in each tract is available for leasing; and

(iii) state the last date, which shall be no less than 15 days after the notice is posted, on which bids may be received.

(3) (a) Applications for the lease of lands filed before the closing date stated in the notice shall be considered to be filed simultaneously.

(b) The applications shall be:

(i) submitted in sealed envelopes; and

(ii) opened in the administration's office at [~~10:00~~] 10 a.m. of the first business day following the last day on which bids may be received.

(c) Leases shall be awarded to the highest responsible, qualified bidder, in terms of the bonus paid in addition to the first year's rental, who submitted a bid in the manner required.

(d) In cases of identical bids of successful bidders:

(i) the right to lease shall be determined by drawing or oral auction;

(ii) the determination of whether to award the lease by drawing or oral auction shall be made at the sole discretion of the director; and

(iii) the drawing or oral auction shall be held in public at the administration's office in a manner calculated to optimize the return to the trust land beneficiary.

(4) (a) At the discretion of the director, mineral leases may be offered at an oral public auction.

(b) The director may set a minimum bid for a public auction.

(5) The director may award a mineral lease without following the competitive bidding procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which in the opinion of the director might otherwise:

(a) defeat or encumber the selection of newly acquired land, either for indemnity or other purposes, or the acquisition by the trust of any land; or

(b) cloud the title to any of those lands.

(6) Following the awarding of a lease to a successful bidder, deposits, except filing fees, made

by unsuccessful bidders shall be returned to those bidders.

(7) (a) [~~Lands~~] Subject to Section 53C-2-104, lands acquired through exchange or indemnity selection from the federal government shall be subject to the vested rights of unpatented mining claimants under the Mining Law of 1872, as amended, and other federal vested rights, both surface and minerals.

(b) Subsection (7)(a) does not prevent the director from negotiating the accommodation of vested rights through any method acceptable to the parties.

(8) The director may lease lands in the order in which applications are filed if:

(a) the director offers trust lands for lease for mineral purposes according to the procedures in Subsections (3) through (6) and the lands are not leased; or

(b) a period of time of not less than one year but less than three years has elapsed following:

(i) a revocation of a withdrawal; or

(ii) the date an existing mineral lease is canceled, relinquished, surrendered, or terminated.

Section 16. Section 53C-3-101 is amended to read:

53C-3-101. Land Grant Management Fund -- Contents -- Use of money.

(1) (a) There is created an enterprise fund known as the Land Grant Management Fund.

(b) This fund shall consist of:

(i) all revenues derived from trust lands except revenues from the sale of those lands;

(ii) all interest earned by the fund;

(iii) all revenues deposited in the fund in accordance with Subsection 41-22-19(3); and

(iv) all revenues obtained from other activities of the director or administration.

(2) The director may expend money:

(a) from the Land Grant Management Fund in accordance with the approved budget for the support of director and administration activities; and

(b) deposited in the fund in accordance with Subsection 41-22-19(3) as necessary to fulfill the purposes of Subsection 41-22-19(3)(b).

(3) Except for revenues deposited under Subsection (1)(b)(iii), any amount in excess of that required to fund the budget shall be distributed to the various trust beneficiaries as of June 30 of each calendar year, and at other times determined by the director, in shares equal to the portion of total Land Grant Management Fund revenues obtained from each beneficiary's land during the accounting period.

(4) Money from the lease or rental of school trust lands or from the use, sale, or lease of resources on school trust lands, all sums paid for fees, [~~including grazing fees,~~] and all forfeitures or penalties received in connection with those transactions shall be deposited in the Permanent State School Fund.

(5) Money from the lease or rental of lands acquired by the state for the benefit of an institution named in Sections 7, 8, and 12 of the Utah Enabling Act, or from the use, sale, or lease of renewable or nonrenewable resources on those lands, and all forfeitures or penalties received in connection with those transactions, shall be distributed to the institution.

(6) Except for revenues deposited under Subsection (1)(b)(iii), any remaining money, including interest earned on the account, shall be distributed in pro rata shares to the various beneficiaries.

Section 17. Section 53C-3-203 is amended to read:

53C-3-203. Land Exchange Distribution Account.

(1) As used in this section, "account" means the Land Exchange Distribution Account created in Subsection (2)(a).

(2) (a) There is created within the General Fund a restricted account known as the Land Exchange Distribution Account.

(b) The account shall consist of revenue deposited in the account as required by Section 53C-3-202.

(3) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(4) The Legislature shall annually appropriate from the account in the following order:

(a) $1,000,000 to the Constitutional Defense Restricted Account, created in 63C-4-103, to be used in accordance with Subsection 63C-4-103(6) for:

(i) fiscal year 2010-11;

(ii) fiscal year 2011-12; and

(iii) fiscal year 2012-13; and

(b) from the deposits to the account remaining after the appropriation in Subsection (4)(a), the following amounts:

(i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral revenue generated from the acquired land, exchanged land, acquired mineral interests, or exchanged mineral interests located in each county, to be used to mitigate the impacts caused by mineral development;

(ii) 25% of the deposits to counties in amounts proportionate to the total surface and mineral

acreage within each county that was conveyed to the United States under the agreement or an exchange, to be used to mitigate the loss of mineral development opportunities resulting from the agreement or exchange;

(iii) 1.68% of the deposits to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah;

(iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources development in the state;

(v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to be used for water development in the state; and

(vi) 7.5% of the deposits to the Constitutional Defense Restricted Account created in Section 63C-4-103.

(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 1% of the deposits remaining in the account after the appropriation is made in accordance with Subsection (4)(a) to the Geological Survey, to be used for test wells, other hydrologic studies, and air quality monitoring in the West Desert.

(6) (a) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5% of the deposits remaining in the account after the appropriation is made in Subsection (4)(a) to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

(b) The administration shall make recommendations to the Permanent Community Impact Fund Board for its consideration when awarding the grants described in Subsection (6)(a).

Section 18. Section 53C-4-101 is amended to read:

53C-4-101. Criteria for sale, lease, exchange, or other disposition of trust lands.

(1) (a) The director shall establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of trust lands, including procedures for determining fair market value of those lands.

(b) (i) Nothing in this title or in the administration's rules and procedures shall be considered to require the director or the administration to execute any transaction for the disposition of trust lands on terms that the director determines by a written finding to be unfavorable to the beneficiaries.

(ii) The director shall send a copy of the written finding to each board member for review and comment.

[~~(2) The governor pursuant to P.L. 103-93 and in collaboration with the board shall implement the inholdings land exchange authorized in that public law.~~]

[~~(3)~~] (2) The governor, with the consent of the board, may participate in [~~similar~~] efforts and initiatives related to school and institutional trust lands inholdings.

Section 19. Section 53C-4-102 is amended to read:

53C-4-102. Sale of trust lands -- Fair market value -- Determination of sale -- Advertising proposed sales -- Sale procedures -- Defaults.

(1) Trust lands may not be sold for less than the fair market value.

(2) (a) The director shall determine whether disposal or retention of all or a portion of a property interest in trust lands is in the best interest of the trust.

(b) When it is determined that the disposal of an interest in trust lands is in the best interest of the applicable trust, the transaction shall be accomplished in an orderly and timely manner.

(3) The director shall advertise any proposed sale, lease, or exchange of an interest in trust lands in a reasonable manner consistent with the director's fiduciary responsibilities.

(4) (a) Any tract of trust land may be subdivided and sold, leased, or exchanged in accordance with a plan, contract, or other action designating the land to be subdivided that is approved by the director.

(b) The director may survey the tract and direct its subdivision.

(c) A plat of the survey shall be filed with the county recorder of the county in which the land is located and with the administration.

(5) Sale conditions, including qualification of prospective purchasers, shall be in accordance with accepted mortgage lending and real estate practices.

(6) Upon the sale of land, the director shall issue to the purchaser a certificate of sale which describes the land purchased and states the amount paid, the amount due, and the time when the principal and interest will become due.

(7) Upon payment in full of principal and interest and the surrender of the original certificate of sale for any tract of land sold, [~~or~~] payment in full of any amounts required to be paid for the partial release of property, or acceptance of appropriate conveyance documents in satisfaction of a land exchange, the governor, or the governor's designee, shall issue a patent to the purchaser, heir, assignee, successor in interest, or other grantee as determined by the director.

(8) (a) If a purchaser of trust lands defaults in the payment of any installment of principal or interest due under the terms of the contract of sale, the director shall notify the purchaser that if the default is not corrected within 30 days after issuance of the notice the director shall proceed

with any remedy which the administration may pursue under law or the contract of sale.

(b) The notice shall be sent by registered or certified mail to the purchaser at the latest address as shown by the records of the administration.

(c) If the default is not corrected by compliance with the requirements of the notice of default within the time provided by the notice, the director may pursue any available remedy under the contract of sale, including forfeiture.

(d) If forfeited lands are sold again to the same purchaser, the sale may be made by a new and independent contract without regard to the forfeited agreement.

Section 20. Section 53C-4-201 is amended to read:

53C-4-201. Surface leases and user permits -- Procedures for issuing leases and user permits.

(1) The director may issue surface leases and user permits of trust lands for any term consistent with sound and prudent real estate practices.

(2) This section does not apply to leases for grazing, oil, gas, and hydrocarbons, or other minerals.

(3) (a) (i) Surface leases or user permits may be entered into by negotiation, public auction, or other public competitive bidding process as determined by rules of the director.

[~~(ii) Any lease or permit which includes an option to purchase at a future date must be entered into through a public competitive process.~~]

(ii) The director may lease trust lands for development and subsequent sale of all or portions of such lands to third parties for no less than fair market value.

(b) Requests for proposals (RFP) on trust lands may be offered by the director after public notice.

Section 21. Section 53C-4-301 is amended to read:

53C-4-301. Exchange of trust lands -- Based on equal value -- Lands encumbered by a lease.

(1) (a) In accordance with rules of the director, trust lands or other trust assets may be exchanged for other land or other assets.

(b) The director[~~, upon authorization from the governor,~~] shall [~~execute and~~] deliver the necessary patents to other proprietors and receive proper deeds for the lands exchanged.

[~~(c) The director may not make an exchange until a deed or patent for the land received in exchange has been issued by the proprietors.~~]

(c) The director shall issue, deliver, and accept conveyance documents in land exchanges in accordance with accepted real estate closing practices.

(2) (a) If trust lands are encumbered by an existing lease, the director may, upon approval of an exchange, and with the consent of the lessee, terminate the existing lease and issue a lease of the same type on lands [~~of comparable acreage or value~~] which may be acquired in the same exchange in which the leased lands are used as base.

(b) The state shall honor all vested rights upon acceptance of exchanged lands.

Section 22. Section 63J-1-504 is amended to read:

63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and assessing fees without legislative approval.

(1) As used in this section:

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

(ii) "Agency" does not mean the Legislature or its committees.

(b) "Fee agency" means any agency that is authorized to establish fees.

(c) "Fee schedule" means the complete list of fees charged by a fee agency and the amount of those fees.

(2) Each fee agency shall adopt a schedule of fees assessed for services provided by the fee agency that are:

(a) reasonable, fair, and reflect the cost of services provided; and

(b) established according to a cost formula determined by the director of the Governor's Office of Planning and Budget and the director of the Division of Finance in conjunction with the agency seeking to establish the fee.

(3) Except as provided in Subsection (6), a fee agency may not:

(a) set fees by rule; or

(b) create, change, or collect any fee unless the fee has been established according to the procedures and requirements of this section.

(4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

(a) present each proposed fee at a public hearing, subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act;

(b) increase, decrease, or affirm each proposed fee based on the results of the public hearing;

(c) except as provided in Subsection (6), submit the fee schedule to the Legislature as part of the agency's annual appropriations request; and

(d) where necessary, modify the fee schedule to implement the Legislature's actions.

(5) (a) Each fee agency shall submit its fee schedule or special assessment amount to the Legislature for its approval on an annual basis.

(b) The Legislature may approve, increase or decrease and approve, or reject any fee submitted to it by a fee agency.

(6) After conducting the public hearing required by this section, a fee agency may establish and assess fees without first obtaining legislative approval if:

(a) (i) the Legislature creates a new program that is to be funded by fees to be set by the Legislature;

(ii) the new program's effective date is before the Legislature's next annual general session; and

(iii) the fee agency submits the fee schedule for the new program to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner;

(b) the Division of Occupational and Professional licensing makes a special assessment against qualified beneficiaries under the Residence Lien Restriction and Lien Recovery Fund Act as provided in Subsection 38-11-206(1); or

(c) (i) the fee agency proposes to increase or decrease an existing fee for the purpose of adding or removing a transactional fee that is charged or assessed by a non-governmental third party but is included as part of the fee charged by the fee agency;

(ii) the amount of the increase or decrease in the fee is equal to the amount of the transactional fee charged or assessed by the non-governmental third party; and

(iii) the increased or decreased fee is submitted to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual session of the Legislature, whichever is sooner.

(7) (a) Each fee agency that wishes to change any fee shall submit to the governor as part of the agency's annual appropriation request a list that identifies:

(i) the title or purpose of the fee;

(ii) the present amount of the fee;

(iii) the proposed new amount of the fee;

(iv) the percent that the fee will have increased if the Legislature approves the higher fee;

(v) the estimated total annual revenue change that will result from the change in the fee;

(vi) the account or fund into which the fee will be deposited; and

(vii) the reason for the change in the fee.

(b) (i) The governor may review and approve, modify and approve, or reject the fee increases.

(ii) The governor shall transmit the list required by Subsection (7)(a), with any modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

(c) Bills approving any fee change shall be filed before the beginning of the Legislature's annual general session, if possible.

(8) (a) Except as provided in Subsection (8)(b), the School and Institutional Trust Lands Administration, established in Section 53C-1-201, is exempt from the requirements of this section.

(b) The following fees of the School and Institutional Trust Lands Administration are subject to the requirements of this section: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

Section 23. Section 63L-2-201 is amended to read:

63L-2-201. Federal government acquisition of real property in the state.

(1) As used in this section:

(a) "Agency" is defined in Section 63G-10-102.

(b) "Agency" includes:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201; and

(ii) the School and Institutional Trust Lands Board of Trustees created in Section 53C-1-202.

(2) (a) Before legally binding the state by executing an agreement to sell or transfer to the United States government 10,000 or more acres of any state lands or school and institutional trust lands, an agency shall submit the agreement or proposal:

(i) to the Legislature for its approval or rejection; or

(ii) in the interim, to the Legislative Management Committee for review of the agreement or proposal.

(b) The Legislative Management Committee may:

(i) recommend that the agency execute the agreement or proposal;

(ii) recommend that the agency reject the agreement or proposal; or

(iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the agreement or proposal.

(3) Before legally binding the state by executing an agreement to sell or transfer to the United States government less than 10,000 acres of any state lands or school and institutional trust lands, an agency shall [~~report to~~] notify the Natural Resources, Agriculture, and Environment Interim Committee.

(4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances of school trust lands to the United States government made for the purpose of completing the Red Cliffs Desert Reserve in Washington County.

CHAPTER 248
H. B. 55
Passed February 25, 2011
Approved March 23, 2011
Effective May 10, 2011

VOLUNTEER SEARCH AND RESCUE WORKERS' COMPENSATION CLAIMS

Chief Sponsor: Kraig Powell
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies provisions related to state officers and employees to address workers' compensation claims by members of a county sheriff's search and rescue team.

Highlighted Provisions:

This bill:

- defines terms;
- modifies the workers' compensation benefits available to a volunteer search and rescue team member under specified circumstances;
- allows use of money in the Search and Rescue Financial Assistance Program for volunteer search and rescue workers' compensation costs; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-2-107, as last amended by Laws of Utah 2010, Chapter 208
67-20-2, as last amended by Laws of Utah 2010, Chapter 300
67-20-3, as last amended by Laws of Utah 2002, Chapter 36

ENACTS:

67-20-7.5, Utah Code Annotated 1953

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

Section 1. Section 53-2-107 is amended to read:

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

(1) (a) "Reimbursable expenses," as used in this section, means those reasonable costs incidental to search and rescue activities.

(b) "Reimbursable expenses" include:

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

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

(iii) training of search and rescue volunteers; [~~and~~]

(iv) costs of providing workers' compensation benefits for volunteer search and rescue team members under Section 67-20-7.5; and

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

(c) "Reimbursable expenses" do not include any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees of any agency or political subdivision of the state.

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

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

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

(ii) money received by the state under Section 23-19-42, Section 41-22-34, and Section 73-18-24; and

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

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

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

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

(b) money available in the program; and

(c) rules made under Subsection (7).

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

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

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this act:

(a) specifying the costs that qualify as reimbursable expenses;

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

(c) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:

(i) the total qualifying expenses submitted;

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

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

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

Section 2. Section 67-20-2 is amended to read:

67-20-2. Definitions.

As used in this chapter:

(1) "Agency" means:

(a) [~~any~~] a department, institution, office, college, university, authority, division, board, bureau, commission, council, or other agency of the state;

(b) [~~any~~] a county, city, town, school district, or special improvement or taxing district; or

(c) any other political subdivision.

(2) "Compensatory service worker" means [~~any~~] a person who performs a public service with or without compensation for an agency as a condition or part of the person's:

(a) incarceration;

(b) plea;

(c) sentence;

(d) diversion;

(e) probation; or

(f) parole.

(3) (a) "Volunteer" means [~~any~~] a person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency.

(b) "Volunteer" does not include:

(i) [~~any~~] a person participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter; or

(ii) a compensatory service [~~workers~~] worker.

(c) "Volunteer" includes a juror or potential juror appearing in response to a summons for a trial jury or grand jury.

(4) "Volunteer safety officer" means an individual who:

(a) provides services as a volunteer under the supervision of an agency; and

(b) at the time the individual provides the services to the supervising agency described in Subsection (4)(a), the individual is:

(i) exercising peace officer authority as provided in Section 53-13-102; or

(ii) if the supervising agency described in Subsection (4)(a) is a fire department:

(A) on the rolls of the supervising agency as a firefighter;

(B) not regularly employed as a firefighter by the supervising agency; and

(C) acting in a capacity that includes the responsibility for the extinguishment of fire.

(5) "Volunteer search and rescue team member" means an individual who:

(a) provides services as a volunteer under the supervision of a county sheriff; and

(b) at the time the individual provides the services to the county sheriff described in Subsection (5)(a), is:

(i) certified as a member of the county sheriff's search and rescue team; and

(ii) acting in the capacity of a member of the search and rescue team of the supervising county sheriff.

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

67-20-3. Purposes for which a volunteer is considered a government employee.

(1) Except as provided in Subsection (2) or (3), a volunteer is considered a government employee for purposes of:

(a) receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act;

(b) the operation of a motor [~~vehicles~~] vehicle or equipment if the volunteer is properly licensed and authorized to do so; and

(c) liability protection and indemnification normally afforded paid a government [~~employees~~] employee.

(2) (a) [~~Notwithstanding Subsection (1)(a), a~~] A supervising agency shall provide workers' compensation benefits for a volunteer safety officer as provided in Section 67-20-7.

(b) [~~Notwithstanding Subsection (2)(a), a~~] A volunteer safety officer is considered an employee of the supervising agency of the volunteer safety officer for purposes of Subsections (1)(b) and (c).

(3) (a) The county of a county sheriff that certifies and supervises a volunteer search and rescue team member shall provide workers' compensation benefits for the volunteer search and rescue team member as provided in Section 67-20-7.5.

(b) For purposes of Subsections (1)(b) and (c), a volunteer search and rescue team member is considered an employee of the county of the county sheriff that certifies and supervises the volunteer search and rescue team member.

Section 4. Section 67-20-7.5 is enacted to read:

67-20-7.5. Workers' compensation benefits for a volunteer search and rescue team member.

(1) A volunteer search and rescue team member is considered an employee of the county of the county sheriff that certifies and supervises the volunteer search and rescue team member for the purpose of receiving workers' compensation benefits under:

(a) Title 34A, Chapter 2, Workers' Compensation Act; and

(b) Title 34A, Chapter 3, Utah Occupational Disease Act.

(2) (a) In accordance with Section 34A-2-105, the workers' compensation benefits described in Subsection (1) are the exclusive remedy against the county of the supervising county sheriff or an officer, agent, or employee of the county or supervising county sheriff, for the injuries and occupational diseases resulting from the volunteer search and rescue team member's services for the supervising county sheriff as a volunteer search and rescue team member.

(b) For purposes of Subsection (2)(a), the county of the supervising county sheriff for whom the volunteer search and rescue team member provides services as a volunteer search and rescue team member is considered an employer of the volunteer search and rescue team member.

(3) To compute the workers' compensation benefits for a volunteer search and rescue team member described in Subsection (1), the average weekly wage of the volunteer search and rescue team member for purposes of the volunteer search and rescue team member's workers' compensation claim is the average weekly wage of an entry-level deputy sheriff employed by the supervising county sheriff at the time of the industrial accident or occupational disease.

CHAPTER 249
H. B. 57
Passed March 9, 2011
Approved March 23, 2011
Effective July 1, 2011

JOINT PROFESSIONAL SCHOOL OF VETERINARY MEDICINE

Chief Sponsor: John G. Mathis
Senate Sponsor: Dennis E. Stowell

LONG TITLE

General Description:

This bill provides for the establishment of a veterinary education program offered by Utah State University in partnership with Washington State University.

Highlighted Provisions:

This bill:

- allows Utah State University, with the approval of the State Board of Regents, to enter into a partnership agreement with Washington State University to establish a veterinary education program;
- provides that, initially, up to 20 Utah resident students and 10 nonresident students may be accepted each year into a four-year program leading to a doctorate degree in veterinary medicine;
- provides that students pursuing a doctoral degree in veterinary medicine complete the first and second years of study at Utah State University and the third and fourth years of study at Washington State University; and
- requires the Legislature, subject to future budget constraints, to annually appropriate money to pay for the nonresident portion of tuition for Utah students enrolled at Washington State University under a partnership agreement.

Monies Appropriated in this Bill:

This bill appropriates as an ongoing appropriation subject to future budget constraints, $1,700,000 from the General Fund for fiscal year 2011-12.

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS:
53B-18-1301, Utah Code Annotated 1953

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

Section 1. Section 53B-18-1301 is enacted to read:

53B-18-1301. Veterinary education program -- Partnership agreement.

(1) With the approval of the State Board of Regents, Utah State University may enter into a partnership agreement with Washington State University to establish a veterinary education program.

(2) The partnership agreement may provide that:

(a) (i) initially, up to 20 Utah resident students and 10 nonresident students may be accepted each year into a four-year program leading to a doctorate in veterinary medicine; and

(ii) if resources become available to expand the doctoral program in veterinary medicine, additional Utah resident students and nonresident students may be accepted into the program; and

(b) students accepted into the doctoral program in veterinary medicine pursuant to Subsection (2)(a) complete the first and second years of study at Utah State University and the third and fourth years of study at Washington State University.

(3) Subject to future budget constraints, the Legislature shall annually provide an appropriation to pay for the nonresident portion of tuition for Utah students enrolled at Washington State University under a partnership agreement authorized by this section for the third and fourth years of a doctoral program in veterinary medicine.

Section 2. Appropriation.

(1) As an ongoing appropriation subject to future budget constraints, there is appropriated from the General Fund for fiscal year 2011-12, $1,700,000 to Utah State University for a veterinary education program.

(2) Money appropriated in Subsection (1) may be used for personnel costs and other expenses related to offering courses in veterinary education.

Section 3. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 250
H. B. 60
Passed February 17, 2011
Approved March 23, 2011
Effective May 10, 2011

PROHIBITING CONTRIBUTIONS DURING SPECIAL SESSION

Chief Sponsor: Patrice M. Arent
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill extends the prohibition on a campaign contribution during a special session to include a special session convened after July 1 during a general election year.

Highlighted Provisions:

This bill:

- extends the prohibition on campaign contributions during a special session to include a special session convened after July 1 during a general election year.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-305, as last amended by Laws of Utah 2003, Chapter 286

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

Section 1. Section 36-11-305 is amended to read:

36-11-305. Campaign contribution during session prohibited.

(1) It is unlawful for a person, lobbyist, principal, or political committee to make a campaign contribution or contract, promise, or agree to make a campaign contribution to a legislator or a legislator's personal campaign committee, or a political action committee controlled by a legislator during the time the Legislature is convened in annual general [~~or~~] session, veto override session, or [~~in a~~] special session [~~convened before July 1 of a general election year~~].

(2) It is unlawful for a person, lobbyist, principal, or political committee to make a campaign contribution, or contract, promise, or agree to make a campaign contribution, to the governor, the governor's personal campaign committee, or a political action committee controlled by the governor during the time the Legislature is convened in annual general [~~or~~] session, veto override session, [~~during a~~] special session [~~convened before July 1 of a general election year~~], or during the time period established by the Utah Constitution, Article VII, Section 8, for the governor to approve or veto bills passed by the Legislature in the annual general session.

(3) Any person who violates this section is guilty of a class A misdemeanor.

CHAPTER 251
H. B. 67
Passed February 24, 2011
Approved March 23, 2011
Effective May 10, 2011

STATE BONDING COMMISSION BONDING AUTHORITY

Chief Sponsor: Bradley G. Last
Senate Sponsor: Dennis E. Stowell

LONG TITLE

General Description:

This bill modifies provisions in the State Financing Consolidation Act to require legislative approval before bonds are authorized or issued under the Act.

Highlighted Provisions:

This bill:

- clarifies and simplifies existing language;
- requires the State Bonding Commission to obtain legislative approval before it authorizes or issues bonds under the authority of the State Financing Consolidation Act; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63B-1b-401, as renumbered and amended by Laws of Utah 2008, Chapter 382
63B-1b-402, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

63B-1b-103, Utah Code Annotated 1953

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

Section 1. Section 63B-1b-103 is enacted to read:

63B-1b-103. Limitation on issuance of bonds -- Legislative approval required.

No bonds may be authorized or issued under this chapter without the prior approval of the Legislature.

Section 2. Section 63B-1b-401 is amended to read:

63B-1b-401. Pledge of agency bonds to pay revenue bonds -- Contents of financing agreements -- Use of money received by authorizing agencies.

(1) [~~With~~] Subject to the requirements of this chapter, and with the approval of the relevant authorizing agency, the State Bonding Commission may pledge, assign, or otherwise transfer any agency bonds, any money payable on or with respect to them, any legally available money or other security administered by an authorizing agency, or any combination of bonds, money, or other security to provide for the payment of revenue bonds issued under Section 63B-1b-402 and the payment of any amounts due under agreements and contracts described in Subsection 63B-1b-402(9).

(2) (a) Before issuing revenue bonds under Section 63B-1b-402, the commission shall enter into a financing agreement with the appropriate authorizing agency or agencies.

(b) This agreement shall specify:

(i) any agency bonds, money, or other security to be pledged by the commission to provide for the payment of the revenue bonds;

(ii) the amount to be paid to the order of the authorizing agency or agencies for the agency bonds, money, or other security; and

(iii) other matters that the commission considers necessary or appropriate.

(3) The amounts received by each authorizing agency from the proceeds of the revenue bonds, together with all amounts paid to the authorizing agencies pursuant to Subsection 63B-1b-402(10), shall be applied by the authorizing agency as authorized by the law creating or authorizing the loan or grant program of the authorizing agency.

Section 3. Section 63B-1b-402 is amended to read:

63B-1b-402. Commission may authorize revenue bonds -- Contents of bond document -- Special and reserve funds -- Limitation on liability -- Restoration of money in reserve funds -- Payment of bonds and other technical requirements -- Refunding -- Report to Division of Finance.

(1) (a) In order to provide authorizing agencies with an alternative method of liquidating agency bonds and[~~, by doing so, providing authorizing agencies~~] with additional funds to further the purposes of the authorizing agencies, the commission may authorize the [~~issuance of~~] state to issue revenue bonds [~~from time to time by the state~~] subject to the requirements of this chapter.

(b) [~~These~~] The revenue bonds shall be payable solely from a special fund established by the state treasurer as provided in Subsection (4).

(c) Revenue bonds may be sold at public or private sale and may be issued in one or more series.

(2) Revenue bonds may be authorized, issued, and sold by the commission on behalf of the state at a time or times and in a manner set forth in a bond document that provides for:

(a) the terms and conditions of sale, including price, whether at, below or above face value;

(b) interest rates, including a variable rate;

(c) authorized denomination;

(d) maturity dates;

(e) form;

(f) manner of execution;

(g) manner of authentication;

(h) place and medium of payment;

(i) redemption terms;

(j) authorized signatures of public officials; and

(k) other provisions and details considered necessary or appropriate.

(3) To the extent set forth in the resolution, the proceeds of revenue bonds may be used for the purposes set forth in Subsection (1) and to:

(a) provide for any necessary or desirable reserve fund as provided for in Subsection (5); and

(b) pay fees, charges, and other amounts related to the issuance and sale of the revenue bonds.

(4) (a) As provided in the bond document, the principal of, premium, if any, and interest on, any issue of revenue bonds is payable solely from and secured by one or more special funds consisting of:

(i) the pledge and assignment of any agency bonds, including all amounts payable on or with respect to them, and other [~~monies~~] money and security, as provided for in an agreement entered into under Subsection 63B-1b-401(2);

(ii) amounts on deposit in the reserve fund, if any, established under Subsection (5);

(iii) amounts available pursuant to any security device or credit enhancement device that the commission authorizes for the purpose of improving the marketability of the revenue bonds; and

(iv) other amounts available and pledged by the commission to secure payment of that issue of revenue bonds.

(b) Owners of revenue bonds do not have recourse against the general funds or general credit of the state or its political subdivisions or agencies, but this limitation does not limit or alter the obligations of political subdivisions on agency bonds in any manner.

(c) Revenue bonds do not constitute nor give rise to a general obligation or liability of, or constitute a charge or lien against, the general credit or taxing power of the state or its political subdivisions or agencies, including any authorizing agency.

(d) Revenue bonds shall contain on their face a statement that:

(i) the revenue bonds are payable solely from the sources set forth in this Subsection (4) and specified in the bond document with respect to the revenue bonds;

(ii) neither the state nor any political subdivision of the state is obligated to pay the revenue bonds; and

(iii) neither the faith and credit nor the taxing power of the state or any of its political subdivisions is pledged to the payment of principal or redemption price of, or premium, if any, or interest on the revenue bonds.

(e) Revenue bonds do not constitute debt of the state within the meaning of Utah Constitution Article XIII, Sec. 5 (3) or Article XIV, Sec. 1.

(5) (a) The commission may establish a reserve fund with respect to any issue of revenue bonds.

(b) If a reserve fund is established, the bond document relating to that issue of revenue bonds shall specify:

(i) the minimum amount that is required to be on deposit in the reserve fund;

(ii) the amount of sale proceeds from the sale of that issue of revenue bonds that shall be deposited in the reserve fund; and

(iii) the manner in which any deficiency in the reserve fund shall be replenished.

(c) (i) On or before the first day of December of each year, the state treasurer shall certify to the governor and the director of the Division of Finance the amount, if any, that may be required to restore all reserve funds established to the minimum amount specified by the state treasurer with respect to each reserve fund.

(ii) The governor may request an appropriation from the Legislature equal to the certified amount in order to restore each reserve fund to the specified minimum amount.

(6) (a) (i) The commission may provide in the bond document that any signature of a public official authorized to sign revenue bonds may be by the facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

(ii) If all signatures of public officials on the revenue bonds are facsimile signatures, the bond document shall provide for a manual authenticating signature on the revenue bonds by or on behalf of a designated authenticating agent.

(iii) If an official ceases to hold office before delivery of the revenue bonds signed by that official, the signature or facsimile signature of the official is valid and sufficient for all purposes.

(b) A facsimile of the seal of the state may be imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

(7) (a) The commission may provide in the bond document for the replacement of lost, destroyed, stolen, or mutilated revenue bonds or for the exchange of revenue bonds after issuance for revenue bonds of smaller or larger denominations.

(b) Revenue bonds in changed denominations shall:

(i) be exchanged for the original revenue bonds in the aggregate principal amounts and in a manner that prevents the duplication of interest; and

(ii) bear interest at the same rate, be of the same series, mature on the same date, and be as nearly as practicable in the same form as the original revenue bonds.

(8) (a) (i) Revenue bonds may be registered as to both principal and interest or may be in a book entry

form under which the right to principal and interest may be transferred only through a book entry.

(ii) The commission may provide for the services and payment for the services of one or more financial institutions, other entities or persons, or nominees, within or outside the state, for:

(A) authentication;

(B) registration;

(C) transfer, including record, bookkeeping, or book entry functions;

(D) exchange; and

(E) payment.

(b) The records of ownership, registration, transfer, and exchange of the revenue bonds, and of persons to whom payment with respect to them is made, are classified as private or protected as defined in Title 63G, Chapter 2, Government Records Access and Management Act.

(c) The revenue bonds and any evidences of participation interests in the revenue bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 (a), Internal Revenue Code of 1986, or any comparable predecessor or successor provision, and applicable regulations.

(9) (a) The commission may authorize the execution and delivery of whatever agreements and contracts that the commission considers necessary and appropriate in connection with the issuance of revenue bonds.

(b) These agreements and contracts may include agreements and contracts with financial and other institutions for financial advisory services, trustee services, insurance, letters of credit, reimbursement agreements, tender agreements, put agreements, repurchase agreements, and indexing and tender agent agreements to:

(i) facilitate the sale of the revenue bonds; or

(ii) secure or provide liquidity to support any agreement, obligation, or contract entered into by an authorized officer on behalf of the state in connection with:

(A) the issuance and sale of the revenue bonds;

(B) any repurchase, remarketing, or other pledge of the revenue bonds; and

(C) any insurance, repurchase, remarketing, tender, put, letter of credit, or agreement, obligation, or contract entered into in connection with them, including payment of fees, charges, or other amounts coming due under agreements entered into with financial or other institutions on behalf of the state.

(10) When all revenue bonds of an issue have been paid, or provision for their payment has been made, [~~there~~] the following shall be transferred to the appropriate authorizing agency or agencies, in the amounts and in the manner that the commission considers fair and equitable, and to the extent not required to secure payment of the revenue bonds and related fees, charges, and other amounts:

(a) all amounts remaining on deposit in any reserve fund established with respect to the issue of revenue bonds; and

(b) all other amounts and all agency bonds held by the commission and any trustee and pledged to the payment of the revenue bonds.

(11) (a) The state treasurer or the commission may create any funds and accounts necessary to carry out the purposes of this section.

(b) (i) The state treasurer shall administer and maintain those funds and accounts.

(ii) The state treasurer may invest all [~~monies~~] money held in those funds and accounts in accordance with Title 51, Chapter 7, State Money Management Act, and in accordance with the bond document or any other agreement entered into on behalf of the state as authorized by the bond document.

(iii) The commission may not approve the bond document or other agreement with respect to the investment and application of [~~these monies~~] the money unless the state treasurer has affirmatively approved any investment provisions contained in the bond document or other agreement.

(c) All income from the [~~monies~~] money invested in a fund or account created under this Subsection (11) shall accrue to the benefit of the fund or account and shall be used for the purpose for which the fund or account was established.

(12) [~~(a)~~] The commission may authorize the issuance of refunding revenue bonds of the state in accordance with Title 11, Chapter 27, Utah Refunding Bond Act, for the purpose of refunding any revenue bonds[~~. (b) The state is~~] and for the purposes of that act, the state shall be considered a "public body" and the commission its "governing body." [~~for purposes of that act.~~]

(13) (a) Revenue bonds may not be issued under this [~~section~~] chapter until an authorized official finds and certifies that all conditions precedent to the issuance of the revenue bond, including the requirements of Section 63B-1b-103, have been satisfied.

(b) A recital on any revenue bond of a finding and certification conclusively establishes the completion and satisfaction of all conditions [~~of~~] required in this section.

(14) Revenue bonds, interest paid on revenue bonds, and any income from revenue bonds [~~is~~] are not taxable within this state for any purpose, except for the corporate franchise tax.

(15) (a) Revenue bonds are legal investments for all state trust funds, insurance companies, banks, trust companies, and the State School Fund.

(b) Revenue bonds may also be used as collateral to secure legal obligations.

(16) Immediately upon the issuance of each issue of revenue bonds, an authorized official shall make a verified return to the Division of Finance of:

(a) the aggregate principal amount of revenue bonds issued;

(b) the amount of proceeds of sale of revenue bonds received by the state;

(c) the amount paid to the authorizing agency or agencies for the agency bonds;

(d) the total amount of all fees and expenses relating to the issuance of the revenue bonds;

(e) the amount of sale proceeds of the revenue bonds used to pay fees and expenses; and

(f) the amount of sale proceeds of the revenue bonds deposited in the reserve fund established with respect to the issue of revenue bonds, if any.

CHAPTER 252
H. B. 76
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

FEDERAL LAW EVALUATION AND RESPONSE

Chief Sponsor: Ken Ivory
Senate Sponsor: Wayne L. Niederhauser
Cosponsors: Johnny Anderson
Roger E. Barrus
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Melvin R. Brown
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Dean Sanpei
Kenneth W. Sumsion
Evan J. Vickers
R. Curt Webb
Ryan D. Wilcox
Brad R. Wilson
Carl Wimmer
Bill Wright

LONG TITLE

General Description:

This bill authorizes the Constitutional Defense Council to evaluate and respond to federal law.

Highlighted Provisions:

This bill:

- defines terms;
- creates a Federalism Subcommittee within the Constitutional Defense Council to:
  - evaluate federal law;
  - report to an interim committee;
  - mail a copy of legislation and the journal to government officers; and
  - recommend that the governor call a special session of the Legislature to respond to federal law;
- authorizes the Federalism Subcommittee chair to:
  - respond to federal law according to an established procedure; and
  - correspond with other states about federal law and coordinate responses to federal law;
- establishes standards by which the Federalism Subcommittee shall evaluate federal law;
- authorizes the Constitutional Defense Council to discuss challenging certain federal court rulings;
- authorizes the Constitutional Defense Council chair to approve certain claims for payments;
- requires the Public Lands Policy Coordinating Office to:
  - provide staff assistance to the Constitutional Defense Council and the Federalism Subcommittee; and
  - prepare a constitutional defense plan;
- reduces the distribution from the Land Exchange Distribution Account to the Permanent Community Impact Board;
- increases the distribution from the Land Exchange Distribution Account to the Constitutional Defense Restricted Account; and
- makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates:

- to the Constitutional Defense Restricted Account as an ongoing appropriation:
  - from the Land Exchange Distribution Account, $600,000;
- to the Constitutional Defense Council as an ongoing appropriation:
  - from the Constitutional Defense Restricted Account, $250,000, subject to intent language stating that the appropriation is to be used to execute a plan regarding council and Federalism Subcommittee duties and at least $144,000 be used to evaluate and respond to federal law;
- to the Civil Division of the Office of the Attorney General as an ongoing appropriation:
  - from the Constitutional Defense Restricted Account, $350,000, subject to intent language stating that the appropriation is to be used to hire attorneys and staff to advise and provide services;
- to Department of Administrative Services as an ongoing appropriation:
  - from General Fund Restricted – Land Exchange Distribution Account, ($600,000); and
- to Department of Community and Culture – Community Development Capital Budget as an ongoing appropriation:
  - from the Permanent Community Impact Fund, ($600,000).

Other Special Clauses:

This bill provides revisor instructions.

This bill coordinates with H.B. 51, School and Institutional Trust Lands, by merging technical and substantive amendments.

Utah Code Sections Affected:

AMENDS:
53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262
63C-4-101, as last amended by Laws of Utah 2010, Chapter 286
63C-4-102, as last amended by Laws of Utah 2010, Chapter 262
63C-4-103, as last amended by Laws of Utah 2010, Chapter 262
63C-4-104, as last amended by Laws of Utah 2009, Chapter 121
63I-1-253, as last amended by Laws of Utah 2010, Chapters 79, 160, and 319
63J-4-603, as last amended by Laws of Utah 2009, Chapters 121 and 262

ENACTS:
63C-4-106, Utah Code Annotated 1953
63C-4-107, Utah Code Annotated 1953
63C-4-108, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:
53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262

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

Section 1. Section 53C-3-203 is amended to read:

53C-3-203. Land Exchange Distribution Account.

(1) As used in this section, "account" means the Land Exchange Distribution Account created in Subsection (2)(a).

(2) (a) There is created within the General Fund a restricted account known as the Land Exchange Distribution Account.

(b) The account shall consist of revenue deposited in the account as required by Section 53C-3-202.

(3) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(4) The Legislature shall annually appropriate from the account in the following order:

(a) $1,000,000 to the Constitutional Defense Restricted Account[~~,~~] created in Section 63C-4-103[~~, to be used in accordance with Subsection 63C-4-103(6) for:~~]; and

[~~(i) fiscal year 2010-11;~~]

[~~(ii) fiscal year 2011-12; and~~]

[~~(iii) fiscal year 2012-13; and~~]

(b) from the deposits to the account remaining after the appropriation in Subsection (4)(a), the following amounts:

(i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral revenue generated from the acquired land, exchanged land, acquired mineral interests, or exchanged mineral interests located in each county, to be used to mitigate the impacts caused by mineral development;

(ii) 25% of the deposits to counties in amounts proportionate to the total surface and mineral acreage within each county that was conveyed to the United States under the agreement or an exchange, to be used to mitigate the loss of mineral development opportunities resulting from the agreement or exchange;

(iii) 1.68% of the deposits to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah;

(iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources development in the state;

(v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to be used for water development in the state; [~~and~~]

(vi) [~~7.5%~~] 11% of the deposits to the Constitutional Defense Restricted Account created in Section 63C-4-103[~~,~~];

[~~(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate~~]

(vii) 1% of the deposits [~~remaining in the account after the appropriation is made in accordance with Subsection (4)(a)~~] to the Geological Survey, to be used for test wells, other hydrologic studies, and air quality monitoring in the West Desert[~~,~~]; and

[~~(6)~~] (viii) [~~Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5%~~] 3% of the deposits [~~remaining in the account after the appropriation is made in Subsection (4)(a)~~] to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

Section 2. Section 63C-4-101 is amended to read:

63C-4-101. Creation of Constitutional Defense Council and Federalism Subcommittee -- Membership -- Vacancies -- Meetings -- Staff -- Reports -- Per diem, travel expenses, and funding.

(1) There is created the Constitutional Defense Council.

(2) (a) The [~~defense~~] council shall consist of the following members:

(i) the governor or the lieutenant governor, who shall serve as chair of the council;

(ii) the president of the Senate or the president of the Senate's designee who shall serve as vice chair of the council;

(iii) the speaker of the House or the speaker of the House's designee who shall serve as vice chair of the council;

(iv) the minority leader of the Senate or the minority leader of the Senate's designee;

(v) the minority leader of the House or the minority leader of the House's designee;

(vi) the attorney general or the attorney general's designee, who shall be one of the attorney general's appointees, not a current career service employee;

(vii) the director of the School and Institutional Trust Lands Administration;

(viii) four elected county commissioners, county council members, or county executives from different counties who are selected by the Utah Association of Counties, at least one of whom shall be from a county of the first or second class;

(ix) the executive director of the Department of Natural Resources, who may not vote;

(x) the commissioner of the Department of Agriculture and Food, who may not vote;

(xi) the director of the Governor's Office of Economic Development, who may not vote; and

(xii) two elected county commissioners, county council members, or county executives from different counties appointed by the Utah Association of Counties, who may not vote.

(b) The council vice chairs shall conduct a council meeting in the absence of the chair.

(c) If both the governor and the lieutenant governor are absent from a meeting of the council, the governor may designate a person to attend the meeting solely for the purpose of casting a vote on any matter on the governor's behalf.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), the [~~defense~~] council shall meet at least monthly or more frequently as needed.

(ii) The [~~defense~~] council need not meet monthly if the chair, after polling the members, determines that a majority of the members do not wish to meet.

(b) The governor or any six members of the council may call a meeting of the council.

(c) Before calling a meeting, the governor or council members shall solicit items for the agenda from other members of the council.

(d) (i) The [~~Constitutional Defense Council~~] council shall require that any entity that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the council.

(ii) Nothing in this Subsection (4)(d) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

(e) A majority of the voting membership on the [~~defense~~] council is required for a quorum to conduct council business. A majority vote of the quorum is required for any action taken by the [~~defense~~] council.

(5) (a) The Office of the Attorney General shall advise:

(i) the [~~defense~~] council[~~.~~]; and

(ii) the Federalism Subcommittee.

(b) The Public Lands Policy Coordinating Office shall provide staff assistance for meetings of the council and Federalism Subcommittee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) (a) The council and Federalism Subcommittee shall be funded from the Constitutional Defense Restricted Account created in Section 63C-4-103.

(b) Money appropriated for or received by the council may be expended by the governor in consultation with the council.

(8) (a) There is created a Federalism Subcommittee of the council.

(b) The subcommittee shall consist of members listed in Subsections (2)(a)(i) through (vi).

(c) (i) The governor or the lieutenant governor shall serve as chair of the subcommittee.

(ii) The council vice chair shall conduct a subcommittee meeting in the absence of the chair.

Section 3. Section 63C-4-102 is amended to read:

63C-4-102. Duties.

(1) The Constitutional Defense Council is a council to assist the governor and the Legislature on the following types of issues:

(a) the constitutionality of [~~unfunded~~] federal mandates;

(b) when making recommendations to challenge the federal mandates and regulations described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those federal mandates or regulations;

(c) legal and policy issues surrounding state and local government rights under R.S. 2477;

(d) legal issues relating to the rights of the School and Institutional Trust Lands Administration and its beneficiaries; and

(e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

(i) federal court rulings that:

(A) hinder the management of the state's prison system and place undue financial hardship on the state's taxpayers;

(B) impact a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or

(C) expand or grant a power to the United States government beyond the limited, enumerated powers granted by the United States Constitution;

(ii) federal laws or regulations that reduce or negate water rights or the rights of owners of private property, or the rights and interest of state and local governments, including sovereignty interests and the power to provide for the health, safety, and welfare, and promote the prosperity of their inhabitants;

(iii) conflicting federal regulations or policies in land management on federal land;

(iv) federal intervention that would damage the state's mining, timber, and ranching industries;

(v) the authority of the Environmental Protection Agency and Congress to mandate local air quality standards and penalties; and

(vi) other issues that are relevant to this Subsection (1).

(2) The council shall:

(a) provide advice to the governor, state planning coordinator, and the public lands policy coordinator concerning coordination of:

(i) state and local government rights under R.S. 2477; and

(ii) other public lands issues;

(b) approve a plan for R.S. 2477 rights developed in accordance with Section 63C-4-104; and

(c) review, at least quarterly:

(i) financial statements concerning implementation of the plan for R.S. 2477 rights; and

(ii) financial and other reports from the Public Lands Policy Coordinating Office concerning its activities.

(3) The council chair may require the attorney general or a designee to provide testimony on potential legal actions that would enhance the state's sovereignty or authority on issues affecting Utah and the well-being of its citizens.

(4) The council chair may direct the attorney general to initiate and prosecute any action that the council determines will further its purposes, including an action described in Section 67-5-29.

(5) (a) Subject to the provisions of this section, the council may select and employ attorneys to implement the purposes and duties of the council.

(b) The council chair may, in consultation with the council, direct any council attorney in any manner considered appropriate by the attorney general to best serve the purposes of the council.

(c) The attorney general shall negotiate a contract for services with any attorney selected and approved for employment under this section.

(6) The council chair [~~shall~~] may, only with the concurrence of the council, review and approve all claims for payments for:

(a) legal services that are submitted to the council; [~~and~~]

(b) an action filed in accordance with Section 67-5-29[~~.~~]; and

(c) costs related to a constitutional defense plan approved in accordance with Section 63C-4-104 that are submitted by:

(i) the Public Lands Policy Coordinating Office;

(ii) the School and Institutional Trust Lands Administration; or

(iii) the Office of the Attorney General.

(7) Within five business days' notice, the council chair may, with the concurrence of the council, order the attorney general or an attorney employed by the council to cease work to be charged to the fund.

(8) (a) At least 20 calendar days before the state submits comments on the draft environmental impact statement or environmental assessment for a proposed land management plan of any federal land management agency, the governor shall make those documents available to:

(i) members of the council; and

(ii) any county executive, county council member, or county commissioner of a county that is covered by the management plan and that has established formal cooperating agency status with the relevant federal land management agency regarding the proposed plan.

(b) (i) Council members or local government officials receiving the documents may make recommendations to the governor or the governor's designee concerning changes to the documents before they are submitted to the federal land management agency.

(ii) Council members or local government officials shall submit recommendations to the governor or the governor's designee no later than 10 calendar days after receiving the documents under Subsection (8)(a).

(c) Documents transmitted or received under this Subsection (8) are drafts and are protected records pursuant to Subsection 63G-2-305(22).

(9) The council shall submit a report on December 1 of each year [~~to the speaker of the House of Representatives and the president of the Senate that summarizes the council's activities.~~] by electronic mail that summarizes the council's activities to each legislator.

Section 4. Section 63C-4-103 is amended to read:

63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of funds -- Uses of funds -- Reports.

(1) There is created a restricted account within the General Fund known as the Constitutional Defense Restricted Account.

(2) The account consists of money from the following revenue sources:

(a) money deposited to the account as required by Section 53C-3-203;

(b) voluntary contributions;

(c) money received by the [~~Constitutional Defense Council~~] council from other state agencies; and

(d) appropriations made by the Legislature.

(3) Funds in the account shall be nonlapsing.

[~~(4) The account balance may not exceed $5,000,000.~~]

[~~(5) Subject to Subsection (6), the~~]

(4) The Legislature may annually appropriate money from the Constitutional Defense Restricted Account to one or more of the following:

(a) the [~~Constitutional Defense Council to carry out its duties in Section 63C-4-102~~] council for the council's or Federalism Subcommittee's duties established in this chapter;

(b) the Public Lands Policy Coordinating Office to carry out its duties in Section 63J-4-603;

(c) the Office of the Governor, to be used only for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4-104;

(d) a county or association of counties to assist counties, consistent with the purposes of the council, in pursuing issues affecting the counties; or

(e) the Office of the Attorney General, to be used only [~~for~~]:

(i) for public lands counsel and assistance and litigation to the state or local governments including asserting, defending, or litigating state and local government rights under R.S. 2477 in accordance with a plan developed and approved as provided in Section 63C-4-104; [~~or~~]

(ii) for an action filed in accordance with Section 67-5-29[~~.~~]; or

(iii) to advise the council and Federalism Subcommittee.

[~~(6) Money appropriated to the Constitutional Defense Restricted Account in accordance with Subsection 53C-3-203(4)(a), if appropriated by the Legislature, may only be expended by the agency to which it was appropriated to pay:~~]

[~~(a) the costs of an action filed in accordance with Section 67-5-29; and~~]

[~~(b) expenses associated with an action described in Subsection (6)(a).~~]

[~~(7)~~] (5) (a) The [~~Constitutional Defense Council~~] council shall require that any entity that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the council.

(b) Nothing in this Subsection [~~(7)~~] (5) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

Section 5. Section 63C-4-104 is amended to read:

63C-4-104. Plans for R.S. 2477 rights and Constitutional defense -- Contents.

(1) As used in this section[~~,~~]:

(a) "Constitutional defense plan" means a plan that outlines actions and expenditures to fulfill the council's and Federalism Subcommittee's duties established by this chapter.

(b) "R.S. 2477 plan" means a guiding document that:

[~~(a)~~] (i) is developed jointly by the Utah Association of Counties and the state;

[~~(b)~~] (ii) is approved by the Constitutional Defense Council; and

[~~(c)~~] (iii) presents the broad framework of a proposed working relationship between the state and participating counties collectively for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477.

(2) The Constitutional Defense Council may approve a R.S. 2477 plan if the R.S. 2477 plan:

(a) provides for a good faith, cooperative effort between the state and each participating county;

(b) allows a county to formally agree to participate in the R.S. 2477 plan by adopting a resolution;

(c) provides that the state and a participating county are equal partners in determining litigation strategy and the expenditure of resources with respect to that county's rights under R.S. 2477; and

(d) provides a process for resolving any disagreement between the state and a participating county about litigation strategy or resource expenditure that includes the following requirements:

(i) the governor or the governor's designee and a representative of the Utah Association of Counties shall first attempt to resolve the disagreement;

(ii) if the county and the state continue to disagree, the county, the governor, and the Utah Association of Counties shall present their recommendations to the Constitutional Defense

Council for a final decision about the strategy or expenditure in question; and

(iii) the county may pursue a strategy or make an expenditure contrary to the final decision of the Constitutional Defense Council only if the county does not claim resources provided to fund the R.S. 2477 plan.

(3) The Constitutional Defense Council shall ensure that the R.S. 2477 plan contains:

(a) provisions identifying which expenditure types require approval of the R.S. 2477 plan committee and which expenditure types may be made without the R.S. 2477 plan committee approval;

(b) provisions requiring that financial statements be provided to members of the R.S. 2477 plan committee and members of the Constitutional Defense Council, and the frequency with which those financial statements must be provided; and

(c) provisions identifying those decisions or types of decisions that may be made by the R.S. 2477 plan committee and those decisions or types of decisions that must be referred to the Constitutional Defense Council for decision.

(4) (a) The Public Lands Policy Coordinating Office, in consultation with the Office of the Attorney General and the School and Institutional Trust Lands, shall prepare and submit a constitutional defense plan to the Constitutional Defense Council for the council's approval.

(b) The constitutional defense plan shall contain proposed action and expenditure for:

(i) the council's or the subcommittee's duties established by this chapter; or

(ii) an action filed in accordance with Section 67-5-29.

[~~(4)~~] (5) The Constitutional Defense Council shall:

(a) review expenditures, at least quarterly, made to further a plan approved under this section;

(b) approve an update to a plan under this section at least annually, or more often, if necessary; and

(c) jointly, with the Public Lands Policy Coordinating Office, present a R.S. 2477 plan approved under this section, with any updates, to:

(i) the Legislature's Natural Resources, Agriculture, and Environment Interim Committee by July 1 of each calendar year, after providing the R.S. 2477 plan to the committee at least seven days before the presentation; and

(ii) the president of the Senate and the speaker of the House of Representatives, which may be by mail.

Section 6. Section 63C-4-106 is enacted to read:

63C-4-106. Evaluation of federal law and policy -- Response.

(1) As used in this chapter:

(a) "Federal governmental entity" means:

(i) the President of the United States;

(ii) the United States Congress;

(iii) a United States agency; or

(iv) an employee or official appointed by the President of the United States.

(b) "Federal law" means:

(i) an executive order by the President of the United States;

(ii) a statute passed by the United States Congress;

(iii) a regulation adopted by a United States agency; or

(iv) a policy statement, guidance, or action by:

(A) a United States agency; or

(B) an employee or official appointed by the President of the United States.

(c) "United States agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.

(2) In accordance with Section 63C-4-107, the Federalism Subcommittee shall evaluate a federal law submitted to the Federalism Subcommittee by a council member.

(3) The Federalism Subcommittee may request information regarding a federal law under evaluation from a United States Senator or Representative elected from the state.

(4) If the Federalism Subcommittee finds that a federal law is not authorized by the United States Constitution or violates the principle of federalism as described in Subsection 63C-4-107(2), the Federalism Subcommittee chair may:

(a) request from a United States Senator or Representative elected from the state:

(i) information about the federal law; or

(ii) assistance in communicating with a federal governmental entity regarding the federal law;

(b) (i) give written notice of the evaluation required by Subsection (2) to the federal governmental entity responsible for adopting or administering the federal law; and

(ii) request a response by a specific date to the evaluation from the federal governmental entity; and

(c) request a meeting, conducted in person or by electronic means, with the federal governmental

entity and a council member, a representative from another state, or a United States Senator or Representative elected from the state to discuss the evaluation of federal law and any possible remedy.

(5) The Federalism Subcommittee may recommend to the governor that the governor call a special session of the Legislature to give the Legislature an opportunity to respond to the subcommittee's evaluation of a federal law.

(6) The Federalism Subcommittee chair may coordinate the evaluation of and response to federal law with another state as provided in Section 63G-4-108.

(7) The Federalism Subcommittee shall submit a report by electronic mail that summarizes action taken in accordance with this section to the Government Operations Interim Committee on May 20 and October 20 of each year.

Section 7. Section 63C-4-107 is enacted to read:

63C-4-107. Standard for evaluation of federal law.

(1) The Federalism Subcommittee shall evaluate whether a federal law submitted under Subsection 63C-4-106(2) is authorized by:

(a) United States Constitution, Article I, Section 2, to provide for the decennial census;

(b) United States Constitution, Article I, Section 4, to override state laws regulating the times, places, and manner of congressional elections, other than the place of senatorial elections;

(c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions by Congress;

(d) United States Constitution, Article I, Section 8, to:

(i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States;

(ii) borrow money on the credit of the United States;

(iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;

(iv) establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;

(v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures;

(vi) provide for the punishment of counterfeiting the securities and current coin of the United States;

(vii) establish post offices and post roads;

(viii) promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

(ix) constitute tribunals inferior to the supreme court;

(x) define and punish piracies and felonies committed on the high seas and offences against the law of nations;

(xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

(xii) raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(xiii) provide and maintain a navy;

(xiv) make rules for the government and regulation of the land and naval forces;

(xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;

(xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

(xvii) exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; or

(xviii) make all laws which shall be necessary and proper for carrying into execution the powers listed in this section, and all other powers vested by the United States Constitution in the government of the United States, or in any department or officer of the United States;

(e) United States Constitution, Article I, Section 9, to authorize a federal officer to receive benefits from a foreign nation;

(f) United States Constitution, Article I, Section 10, to fix the pay of members of Congress and of federal officers;

(g) United States Constitution, Article II, Section 1, to:

(i) set the time for choosing electors; or

(ii) establish who succeeded to the presidency after the vice president;

(h) United States Constitution, Article II, Section 2, to:

(i) serve as Commander-in-Chief of the armed forces;

(ii) require the written opinions of executive officers;

(iii) grant reprieves and pardons;

(iv) make vacancy appointments;

(v) make treaties, subject to the advice and consent of the United States Senate;

(vi) appoint foreign affairs officers subject to the advice and consent of the United States Senate;

(vii) appoint domestic affairs officers subject either to the advice and consent of the United States Senate or pursuant to law;

(viii) appoint judges subject to the advice and consent of the United States Senate; or

(xiv) authorize the president to fill designated inferior offices without senatorial consent;

(i) United States Constitution, Article II, Section 3, to:

(i) receive representatives of foreign powers;

(ii) execute the laws;

(iii) commission United States officers;

(iv) give Congress information;

(v) make recommendations to Congress;

(vi) convene Congress on extraordinary occasions; or

(vii) adjourn Congress if it cannot agree on a time;

(j) United States Constitution, Article III, Section 1, to:

(i) create exceptions to the supreme court's appellate jurisdiction;

(ii) fix the jurisdiction of federal courts inferior to the supreme court; or

(iii) declare the punishment for treason;

(k) United States Constitution, Article IV, Section 1, to establish the rules by which the records and judgments of states are proved in other states;

(l) United States Constitution, Article IV, Section 3, to:

(i) manage federal property;

(ii) dispose of federal property;

(iii) govern the federal territories; or

(iv) consent to admission of new states or the combination of existing states;

(m) United States Constitution, Article IV, Section 4, to defend states from invasion, insurrection, and non-republican forms of government;

(n) United States Constitution, Article V, Section 1, to propose constitutional amendments;

(o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal officers;

(p) United States Constitution, Amendment XIII, to abolish slavery;

(q) United States Constitution, Amendment XIV, to guard people from certain state abuses;

(r) United States Constitution, Amendment XVI, to impose taxes on income from any source without having to apportion the total dollar amount of tax collected from each state according to each state's population in relation to the total national population;

(s) United States Constitution, Amendment XX, to revise the manner of presidential succession;

(t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and protect the right to vote; or

(u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting Congress.

(2) The Federalism Subcommittee shall evaluate whether a federal law submitted under Subsection 63C-4-106(2) violates the principle of federalism by:

(a) affecting the distribution of power and responsibility among the state and national government;

(b) limiting the policymaking discretion of the state;

(c) impacting a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; and

(d) impacting the sovereignty rights and interest of the state or a political subdivision to provide for the health, safety, and welfare and promote the prosperity of the state's or political subdivision's inhabitants.

(3) In the evaluation of a federal law, the Federalism Subcommittee:

(a) shall rely on:

(i) the text of the United States Constitution, as amended;

(ii) the meaning of the text of the United States Constitution, as amended, at the time of its drafting and ratification; and

(iii) a primary source document that is:

(A) directly relevant to the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended; or

(B) created by a person directly involved in the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended;

(b) may rely on other relevant sources, including federal court decisions; and

(c) is not bound by a holding by a federal court.

Section 8. Section 63C-4-108 is enacted to read:

63C-4-108. Communication with other states and governmental entities.

(1) The Federalism Subcommittee chair may correspond with the presiding officer of the legislative branch of another state or an entity of another state that has powers and duties that are similar to the Federalism Subcommittee to discuss and coordinate the evaluation of and response to federal law as provided in Section 63C-4-106.

(2) The Federalism Subcommittee shall send a copy of this bill and the pages of the House and Senate Journal that pertain to this bill to:

(a) the governor of each state;

(b) the presiding officer, the majority leader, and the minority leader of each house, if applicable, of each state legislature;

(c) each United States Senator or Representative elected from this state;

(d) the Chief Justice of the United States Supreme Court;

(e) the President of the United States; and

(f) the presiding officer, the majority leader, and the minority leader of each house of the United States Congress.

Section 9. Section 63I-1-253 is amended to read:

63I-1-253. Repeal dates, Titles 53, 53A, and 53B.

The following provisions are repealed on the following dates:

(1) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

(2) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is repealed July 1, 2020.

(3) Title 53A, Chapter 1a, Part 9, Voluntary Extended-day Kindergarten Program, is repealed July 1, 2011.

(4) Section 53A-2-118.3 is repealed December 31, 2016.

(5) The State Instructional Materials Commission, created in Section 53A-14-101, is repealed July 1, 2011.

(6) Subsections 53A-16-107(3) and (4) are repealed December 31, 2016.

(7) Section 53A-16-107.1 is repealed December 31, 2016.

(8) Section 53A-17a-163, Performance-based Compensation Pilot Program is repealed July 1, 2011.

(9) Subsection 53C-3-203[~~(5)~~](4)(b)(vii), which provides for the distribution of money from the Land Exchange Distribution Account to the Geological Survey for test wells, other hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

Section 10. Section 63J-4-603 is amended to read:

63J-4-603. Powers and duties of coordinator and office.

(1) The coordinator and the office shall:

(a) make a report to [~~and provide staff assistance to~~] the Constitutional Defense Council created under Section 63C-4-101 concerning R.S. 2477 rights and other public lands issues under Title 63C, Chapter 4, Constitutional Defense Council;

(b) provide staff assistance to the Constitutional Defense Council created under Section 63C-4-101 for meetings of the council and Federalism Subcommittee;

(c) (i) prepare and submit a constitutional defense plan under Section 63C-4-104; and

(ii) execute any action assigned in a constitutional defense plan;

[~~(b)~~] (d) under the direction of the state planning coordinator, assist in fulfilling the state planning coordinator's duties outlined in Section 63J-4-401 as those duties relate to the development of public lands policies by:

(i) developing cooperative contracts and agreements between the state, political subdivisions, and agencies of the federal government for involvement in the development of public lands policies;

(ii) producing research, documents, maps, studies, analysis, or other information that supports the state's participation in the development of public lands policy;

(iii) preparing comments to ensure that the positions of the state and political subdivisions are considered in the development of public lands policy;

(iv) partnering with state agencies and political subdivisions in an effort to:

(A) prepare coordinated public lands policies;

(B) develop consistency reviews and responses to public lands policies;

(C) develop management plans that relate to public lands policies; and

(D) develop and maintain a statewide land use plan that is based on cooperation and in conjunction with political subdivisions; and

(v) providing other information or services related to public lands policies as requested by the state planning coordinator;

[~~(c)~~] (e) facilitate and coordinate the exchange of information, comments, and recommendations on public lands policies between and among:

(i) state agencies;

(ii) political subdivisions;

(iii) the Office of Rural Development created under Section 63M-1-1602;

(iv) the Resource Development Coordinating Committee created under Section 63J-4-501;

(v) School and Institutional Trust Lands Administration created under Section 53C-1-201;

(vi) the committee created under Section 63F-1-508 to award grants to counties to inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and

(vii) the Constitutional Defense Council created under Section 63C-4-101;

[~~(d)~~] (f) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and Title 9, Chapter 8, Part 4, Historic Sites;

[~~(e)~~] (g) consistent with other statutory duties, encourage agencies to responsibly preserve archaeological resources;

[~~(f)~~] (h) maintain information concerning grants made under Subsection (1)[~~(h)~~](j), if available;

[~~(g)~~] (i) report annually, or more often if necessary or requested, concerning the office's activities and expenditures to:

(i) the Constitutional Defense Council; and

(ii) the Legislature's Natural Resources, Agriculture, and Environment Interim Committee jointly with the Constitutional Defense Council;

[~~(h)~~] (j) make grants of up to 16% of the office's total annual appropriations from the Constitutional Defense Restricted Account to a county or statewide association of counties to be used by the county or association of counties for public lands matters if the coordinator, with the advice of the Constitutional Defense Council, determines that the action provides a state benefit;

[~~(i)~~] (k) provide staff services to the Snake Valley Aquifer Advisory Council created in Section 63C-12-103; and

[~~(j)~~] (l) coordinate and direct the Snake Valley Aquifer Research Team created in Section 63C-12-107.

(2) The coordinator and office shall comply with Subsection 63C-4-102(8) before submitting a comment to a federal agency, if the governor would be subject to Subsection 63C-4-102(8) if the governor were submitting the material.

(3) The office may enter into a contract or other agreement with another state agency to provide information and services related to:

(a) the duties authorized by Title 72, Chapter 3, Highway Jurisdiction and Classification Act;

(b) legal actions concerning Title 72, Chapter 3, Highway Jurisdiction and Classification Act, or R.S. 2477 matters; or

(c) any other matter within the office's responsibility.

Section 11. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

Item 1 To General Fund Restricted - Constitutional Defense Restricted Account From General Fund Restricted - Land Exchange Distribution Account $600,000

Schedule of Programs:

Constitutional Defense Restricted Account $600,000

Item 2 To Governor's Office

From General Fund Restricted - Constitutional Defense $250,000

Schedule of Programs:

Constitutional Defense Council $250,000

The Legislature intends that the Constitutional Defense Council use this appropriation to execute a plan regarding council and Federalism Subcommittee duties and use at least $144,000 of the appropriation to evaluate and respond to federal law.

Item 3 To Office of Attorney General

From General Fund Restricted - Constitutional Defense $350,000

Schedule of Programs:

Civil $350,000

The Legislature intends that the Office of Attorney General use this appropriation to hire attorneys and staff to advise and provide services as provided by Subsection 63C-4-103(4)(e).

Item 4 To Department of Administrative Services - Finance - Mandated From General Fund Restricted - Land Exchange Distribution Account ($600,000)

Schedule of Programs:

Land Exchange Distribution ($600,000)

Item 5 To Department of Community and Culture - Community Development Capital Budget From Permanent Community Impact Fund ($600,000)

Schedule of Programs:

Permanent Community Impact Board ($600,000)

Section 12. Revisor instructions.

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the references in Subsection 63C-4-108(2) from "this bill" to the bill's designated chapter number in the Laws of Utah.

Section 13. Coordinating H.B. 76 with H.B. 51 -- Merging technical and substantive amendments.

If this H.B. 76 and H.B. 51, School and Institutional Trust Lands, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(1) merge the changes from both bills to modify Subsection 53C-3-203(4)(b)(viii) to read:

"[~~(6)~~] (viii) [~~Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5%~~] 3% of the deposits [~~remaining in the account after the appropriation is made in Subsection (4)(a)~~] to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands."; and

(2) add a newly enacted Subsection 53C-3-203(5) to read:

"(5) The administration shall make recommendations to the Permanent Community Impact Fund Board for its consideration when awarding the grants described in Subsection (4)(b)(viii)."

CHAPTER 253
H. B. 79
Passed February 25, 2011
Approved March 23, 2011
Effective May 10, 2011

PROPERTY AND CASUALTY CERTIFICATE OF INSURANCE ACT

Chief Sponsor: Todd E. Kiser
Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the Insurance Code to address issues related to certificates of insurance for property and casualty insurance.

Highlighted Provisions:

This bill:

- provides for the scope of the provisions;
- defines terms;
- requires filing of forms, with exceptions;
- addresses the scope of certificates of insurance;
- requires certain language to be included in a certificate of insurance;
- prohibits false and misleading practices;
- addresses notice requirements;
- provides for enforcement; and
- authorizes rulemaking.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
31A-22-1701, Utah Code Annotated 1953
31A-22-1702, Utah Code Annotated 1953
31A-22-1703, Utah Code Annotated 1953
31A-22-1704, Utah Code Annotated 1953
31A-22-1705, Utah Code Annotated 1953
31A-22-1706, Utah Code Annotated 1953
31A-22-1707, Utah Code Annotated 1953

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

Section 1. Section 31A-22-1701 is enacted to read:

Part 17. Property and Casualty Certificate of Insurance Act

31A-22-1701. Title -- Scope of part.

(1) This part is known as the "Property and Casualty Certificate of Insurance Act."

(2) (a) Except as provided in Subsection (2)(b), this part applies to a certificate of insurance issued on or after May 10, 2011, as evidence of insurance coverage on property, operations, or risks located in this state.

(b) This part applies on and after July 1, 2012, to a certificate of insurance that is issued as evidence of insurance coverage on property, operations, or risks located in this state if the certificate of insurance is an exhibit to a contract executed before July 1, 2012.

(c) This part applies, regardless of where located, to the following in relation to a certificate of insurance described in Subsection (2)(b):

(i) a certificate holder;

(ii) a policyholder;

(iii) an insurer; or

(iv) an insurance producer.

Section 2. Section 31A-22-1702 is enacted to read:

31A-22-1702. Definitions.

Notwithstanding Section 31A-1-301, as used in this part:

(1) "Certificate holder" means a person who:

(a) requests, obtains, or possesses a certificate of insurance; and

(b) is not a policyholder.

(2) "Certificate of insurance" means a document that is prepared for or issued to a person who is not a policyholder as evidence of insurance, regardless of how it is titled or described.

(3) "Insurer" means:

(a) an insurer as defined in Section 31A-1-301; and

(b) any other person engaged in the business of making insurance or a surety contract.

(4) "Person," in addition to the definition in Section 31A-1-301, includes:

(a) to the extent not prohibited by federal law:

(i) the federal government; or

(ii) an administrative unit of the federal government;

(b) the state;

(c) an administrative unit of the state;

(d) a political subdivision of the state; or

(e) an administrative unit of a political subdivision of the state.

(5) "Policyholder" means a person who contracts with a property and casualty insurer for insurance coverage.

Section 3. Section 31A-22-1703 is enacted to read:

31A-22-1703. Filing of form.

(1) Notwithstanding Section 31A-21-201, a person may not:

(a) prepare, issue, or request the issuance of a certificate of insurance unless the certificate of insurance form is filed with the commissioner; or

(b) modify a filed certificate of insurance form unless filed with the commissioner.

(2) The commissioner shall object to the use of, or prohibit the use of, a certificate of insurance form

filed under this section if the certificate of insurance form:

(a) is unfair, misleading, or deceptive;

(b) violates public policy;

(c) fails to comply with Section 31A-22-1704; or

(d) violates any law, including a rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) A standard certificate of insurance form filed for use by a nationally recognized insurance rating organization that is licensed by the commissioner, is considered filed for use for purposes of this section or Section 31A-21-201.

Section 4. Section 31A-22-1704 is enacted to read:

31A-22-1704. Scope of certificate of insurance -- Required statement.

(1) A certificate of insurance is not an insurance policy and does not affirmatively or negatively amend, extend, or alter the coverage afforded by an insurance policy to which a certificate of insurance refers.

(2) A certificate of insurance may not confer to a certificate holder a right that is not provided by an insurance policy to which the certificate of insurance refers.

(3) (a) A certificate of insurance may not refer to a contract that is not an insurance policy, including a construction or service contract.

(b) Notwithstanding any requirement, term, or condition of a document with respect to which a certificate of insurance may be issued or may pertain, the insurance coverage afforded by a referenced insurance policy is subject to the terms, exclusions, and conditions of the insurance policy itself.

Section 5. Section 31A-22-1705 is enacted to read:

31A-22-1705. False or misleading practices.

(1) A person may not knowingly request or require the issuance of a certificate of insurance from an insurer, insurance producer, or policyholder that contains false or misleading information concerning an insurance policy to which the certificate of insurance refers.

(2) A person may not knowingly prepare or issue a certificate of insurance that:

(a) contains false or misleading information; or

(b) purports to affirmatively or negatively alter, amend, or extend the coverage provided by an insurance policy to which the certificate of insurance refers.

(3) (a) A person may not prepare, issue, or request an opinion letter or other document, either in addition to or in lieu of a certificate of insurance that is inconsistent with this part.

(b) An insurer or insurance producer may prepare or issue an addendum to a certificate of insurance that clarifies or explains the coverage provided by an insurance policy if the addendum complies with this part.

Section 6. Section 31A-22-1706 is enacted to read:

31A-22-1706. Notice of cancellation, nonrenewal, or material change.

(1) A certificate holder only has a right to a notice of cancellation, nonrenewal, a material change, or to a similar notice if the certificate holder has rights to the notice under the terms of the insurance policy to which the certificate of insurance refers, or under any rider, or endorsement to the insurance policy.

(2) The terms and conditions of a notice described in Subsection (1), including the required timing of the notice, is governed by the insurance policy. A certificate of insurance may not alter a term or condition of the notice.

Section 7. Section 31A-22-1707 is enacted to read:

31A-22-1707. Enforcement -- Rulemaking.

(1) A certificate of insurance or other document that is prepared, issued, or requested in violation of this part is void.

(2) The commissioner may bring action in accordance with Section 31A-2-308 and Title 63G, Chapter 4, Administrative Procedures Act, for a violation of this part.

(3) The commissioner may:

(a) examine and investigate the activities of any person who the commissioner believes has been or is engaged in an act prohibited by this part;

(b) enforce this part; and

(c) impose a penalty or enforce a remedy authorized by this title for a violation of this part.

(4) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary and proper to carry out this part.

CHAPTER 254
H. B. 94
Passed March 4, 2011
Approved March 23, 2011
Effective May 10, 2011
(Retrospective operation to January 1, 2010)

INCOME TAX CREDIT FOR COMBAT RELATED DEATH

Chief Sponsor: Merlynn T. Newbold
Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill provides a nonrefundable individual income tax credit for a combat related death.

Highlighted Provisions:

This bill:

- defines terms; and
- provides a nonrefundable individual income tax credit for a combat related death.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2010.

Utah Code Sections Affected:

ENACTS:
59-10-1025, Utah Code Annotated 1953

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

Section 1. Section 59-10-1025 is enacted to read:

59-10-1025. (Codified as 59-10-1027) Nonrefundable tax credit for combat related death.

(1) As used in this section:

(a) "Active component of the United States Armed Forces" means active duty service in the United States Army, United States Navy, United States Air Force, United States Marine Corps, or United States Coast Guard.

(b) "Combat related death" means an individual who dies:

(i) on or after January 1, 2010; and

(ii) (A) while in military service in a combat zone; or

(B) as a result of a wound, disease, or injury the individual incurs while in military service in a combat zone.

(c) "Combat zone" means an area that the President of the United States designates by Executive Order as an area in which an active component of the United States Armed Forces or a reserve component of the United States Armed Forces are or have engaged in combat.

(d) "Military service in a combat zone" means service:

(i) in an active component of the United States Armed Forces or reserve component of the United States Armed Forces; and

(ii) performed:

(A) on or after the date the President of the United States designates by Executive Order as the date combatant activities begin in a combat zone; and

(B) on or before the date the President of the United States designates by Executive Order as the date combatant activities terminate in a combat zone.

(e) "Reserve component of the United States Armed Forces" means service in a reserve component of the armed forces listed in 10 U.S.C. Sec. 101(c) or 10 U.S.C. Sec. 10101.

(2) A claimant, estate, or trust that files a return on behalf of an individual who dies a combat related death may claim a nonrefundable tax credit against that individual's tax liability under this chapter as provided in this section.

(3) For purposes of Subsection (2), the tax credit is equal to the tax liability of the individual who dies a combat related death for the taxable year during which the individual dies.

Section 2. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2010.

CHAPTER 255
H. B. 104
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

HOMEOWNER ASSOCIATION AMENDMENTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions relating to condominium owner and homeowner associations.

Highlighted Provisions:

This bill:

- prohibits an association from charging a fee for providing payoff information needed for a closing of a unit or lot unless provided for in the declaration, limits the amount of the fee, provides a consequence if an association fails to provide the information within a specified time, and provides requirements for a request for payoff information; and
- requires associations to register with the Department of Commerce and to submit an updated registration under specified circumstances, and establishes consequences for a failure to register or update a previous registration.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
57-8-6.3, Utah Code Annotated 1953
57-8-13.1, Utah Code Annotated 1953
57-8a-105, Utah Code Annotated 1953
57-8a-106, Utah Code Annotated 1953

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

Section 1. Section 57-8-6.3 is enacted to read:

57-8-6.3. Fee for providing payoff information needed at closing.

(1) Unless specifically authorized in the declaration, bylaws, or rules, an association of unit owners may not charge a fee for providing association payoff information needed in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit.

(2) An association of unit owners may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration, bylaws, or rules to be paid before closing; or

(b) charge the fee if it exceeds $50.

(3) (a) An association of unit owners that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

(b) A request under Subsection (3)(a) is not effective unless the request:

(i) is conveyed in writing to the primary contact person designated under Subsection 57-8-13.1(3)(d);

(ii) contains:

(A) the name, telephone number, and address of the person making the request; and

(B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the unit for which the payoff information is requested.

(4) This section applies to each association of unit owners, regardless of when the association of unit owners is formed.

Section 2. Section 57-8-13.1 is enacted to read:

57-8-13.1. Registration with Department of Commerce.

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration, an association of unit owners shall register with the department in the manner established by the department.

(b) An association of unit owners existing under a declaration recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association of unit owners registering as required in this section to provide with each registration:

(a) the name and address of the association of unit owners;

(b) the name, address, telephone number, and, if applicable, email address of the president of the association of unit owners;

(c) the name and address of each management committee member;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit; and

(e) a registration fee not to exceed $37.

(4) An association of unit owners that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) During any period of noncompliance with the registration requirements of Subsection (2) or the requirement for an updated registration under Subsection (4):

(a) a lien for the nonpayment of common expenses may not arise under Section 57-8-20 against any condominium unit; and

(b) an association of unit owners may not enforce a previous lien under Section 57-8-20 against any condominium unit.

Section 3. Section 57-8a-105 is enacted to read:

57-8a-105. Registration with Department of Commerce.

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed $37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) During any period of noncompliance with the registration requirements of Subsection (2) or the requirement for an updated registration under Subsection (4):

(a) a lien for the nonpayment of an assessment may not arise under Section 57-8a-203 against any lot; and

(b) an association may not enforce a previous lien under Section 57-8a-203 against any lot.

Section 4. Section 57-8a-106 is enacted to read:

57-8a-106. Fee for providing payoff information needed at closing.

(1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.

(2) An association may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or

(b) charge the fee if it exceeds $50.

(3) (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

(b) A request under Subsection (3)(a) is not effective unless the request:

(i) is conveyed in writing to the primary contact person designated under Subsection 57-8a-105(3)(d);

(ii) contains:

(A) the name, telephone number, and address of the person making the request; and

(B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the lot for which the payoff information is requested.

(4) This section applies to each association, regardless of when the association is formed.

CHAPTER 256
H. B. 137
Passed March 9, 2011
Approved March 23, 2011
Effective May 10, 2011

TRANSPORTATION CHANGES

Chief Sponsor: Kenneth W. Sumsion
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill modifies State Lands and the Transportation Code by amending provisions relating to the construction of highway facilities over sovereign lands.

Highlighted Provisions:

This bill:

- provides that Division of Forestry, Fire, and State Lands may not issue a lease for the construction of a highway facility over sovereign lakebed lands unless the applicant for the lease submits an approval for the construction of the highway facility from the Transportation Commission with the application for the lease;
- specifies requirements for a lease for the construction of a highway facility over sovereign lakebed lands;
- requires the Transportation Commission to review and approve plans for the construction of a highway facility over sovereign lakebed lands;
- specifies requirements for an application for approval from the Transportation Commission to construct a highway facility over sovereign lakebed lands;
- grants the Transportation Commission rulemaking authority to establish minimum guidelines for an application to construct a highway facility over sovereign lakebed lands;
- requires the private entity, as part of an approval for the construction of a highway facility over sovereign lakebed lands, to enter an agreement with the Department of Transportation authorizing the department to assure the safety of the design, construction, operation, and maintenance of the facility; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

65A-7-5, as last amended by Laws of Utah 1997, Chapter 10
65A-10-1, as last amended by Laws of Utah 1994, Chapter 294
72-1-303, as last amended by Laws of Utah 2009, Chapter 364

ENACTS:

72-6-301, Utah Code Annotated 1953
72-6-302, Utah Code Annotated 1953
72-6-303, Utah Code Annotated 1953

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

Section 1. Section 65A-7-5 is amended to read:

65A-7-5. Surface leases -- Procedures for issuing leases -- Leases for the construction of a highway facility.

(1) The division may issue surface leases of state lands for any period up to 99 years.

(2) This section does not apply to leases for oil and gas, grazing, or mining purposes.

(3) The division shall disclose any known geologic hazard affecting leased property.

(4) (a) (i) Surface leases may be entered into by negotiation, public auction, or other public competitive bidding process as determined by rules of the division.

(ii) Requests for proposals (RFP) on state lands may be offered by the division after public notice.

(b) (i) A notice of an invitation for bids or a public auction shall, prior to the auction or acceptance of a bid, be published at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered.

(ii) The notice shall be sent, by certified mail, at least 30 days prior to the auction or acceptance of a bid, to each person who owns property adjoining the state lands offered for lease.

(c) (i) Surface leases entered into through negotiation shall be published in the manner set forth in Subsection (4)(b) 30 days prior to final approval.

(ii) The notice shall include, at a minimum, a general description of the lands proposed for lease and the type of lease.

(5) (a) The division may not issue a lease for the construction of a highway facility over sovereign lakebed lands unless the applicant for the lease submits an approval for the construction of a highway facility over sovereign lakebed lands from the Transportation Commission in accordance with Section 72-6-303 with the application for the lease.

(b) The division shall consider the information and analysis provided by the Transportation Commission under Section 72-6-303 when making its determination as to whether to issue a lease for the construction of a highway facility over sovereign lakebed lands.

(c) A lease for the construction of a highway facility over sovereign lakebed lands:

(i) may include an option to renew the lease upon expiration; and

(ii) shall include a provision that requires that at the termination of the lease:

(A) the ownership of the highway facility shall revert to the state;

(B) the highway facility shall be in a state of proper maintenance as outlined in the agreement

under Subsection 72-6-303(4)(e) and determined by the Department of Transportation; and

(C) the highway facility shall be returned to the Department of Transportation in satisfactory condition at no further cost to the Department of Transportation, in a condition of good repair.

(d) The requirements under this Subsection (5) apply to all pending and future applications for a lease for the construction of a highway facility over sovereign lakebed lands.

Section 2. Section 65A-10-1 is amended to read:

65A-10-1. Authority of division to manage sovereign lands.

(1) The division is the management authority for sovereign lands, and may exchange, sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust.

(2) Nothing in this section shall be construed as asserting state ownership of the beds of nonnavigable lakes, bays, rivers, or streams.

(3) A lease for the construction of a highway facility over sovereign lakebed lands shall comply with the requirements described in Subsection 65A-7-5(5).

Section 3. Section 72-1-303 is amended to read:

72-1-303. Duties of commission.

(1) The commission has the following duties:

(a) determining priorities and funding levels of projects in the state transportation systems for each fiscal year based on project lists compiled by the department;

(b) determining additions and deletions to state highways under Chapter 4, Designation of State Highways Act;

(c) holding public hearings and otherwise providing for public input in transportation matters;

(d) making policies and rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to perform the commission's duties described under this section;

(e) in accordance with Section 63G-4-301, reviewing orders issued by the executive director in adjudicative proceedings held in accordance with Title 63G, Chapter 4, Administrative Procedures Act;

(f) advising the department in state transportation systems policy;

(g) approving settlement agreements of condemnation cases subject to Section 63G-10-401;

(h) in accordance with Section 17B-2a-807, appointing a commissioner to serve as a nonvoting, ex officio member or a voting member on the board of trustees of a public transit district;

(i) in accordance with Section 17B-2a-808, reviewing, at least annually, the short-term and long-range public transit plans; and

(j) reviewing administrative rules made, amended, or repealed by the department.

(2) (a) For projects prioritized with funding provided under Sections 72-2-124 and 72-2-125, the commission shall annually report to a committee designated by the Legislative Management Committee:

(i) a prioritized list of the new transportation capacity projects in the state transportation system and the funding levels available for those projects; and

(ii) the unfunded highway construction and maintenance needs within the state.

(b) The committee designated by the Legislative Management Committee under Subsection (2)(a) shall:

(i) review the list reported by the Transportation Commission; and

(ii) make a recommendation to the Legislature on:

(A) the amount of additional funding to allocate to transportation; and

(B) the source of revenue for the additional funding allocation under Subsection (2)(b)(ii)(A).

(3) The commission shall review and may approve plans for the construction of a highway facility over sovereign lakebed lands in accordance with Chapter 6, Part 3, Approval of Highway Facilities on Sovereign Lands Act.

Section 4. Section 72-6-301 is enacted to read:

Part 3. Approval of Highway Facilities on Sovereign Lands Act

72-6-301. Title.

This part is known as the "Approval of Highway Facilities on Sovereign Lands Act."

Section 5. Section 72-6-302 is enacted to read:

72-6-302. Definitions.

As used in this section:

(1) "Sovereign lands" has the same meaning as defined in Section 65A-1-1.

(2) "Tollway" has the same meaning as defined in Section 72-6-118.

Section 6. Section 72-6-303 is enacted to read:

72-6-303. Approval to construct highway facility over sovereign lakebed lands.

(1) (a) The commission shall review and may approve a proposed plan for the construction of a highway facility over sovereign lakebed lands.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing minimum guidelines for an application to construct a highway facility over sovereign lakebed lands.

(2) As part of an application to lease sovereign land, a private entity seeking to obtain a lease over sovereign lakebed lands shall submit an application to the commission for approval from the commission to construct a highway facility over sovereign lakebed lands.

(3) A private entity shall include in an application described in Subsection (2):

(a) a map indicating the location and legal description of the highway facility and all proposed interconnections with other highway facilities;

(b) a description of the highway facility, including the conceptual design of the highway facility and a statement whether the highway facility will be operated and maintained as a tollway facility;

(c) a list of the major permits and approvals required for developing or operating improvements to the highway facility from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(d) a description of the types of public utility facilities, if any, that will be crossed by the highway facility and a statement of the plans to accommodate the crossing;

(e) a description of the types of public utilities used, carried, or accommodated by the highway facility and a statement of the plans to use, carry, or accommodate the public utilities;

(f) an estimate of the design and construction costs of the highway facility;

(g) a statement setting forth the private entity's general plans for constructing, operating, and maintaining the highway facility, including:

(i) the proposed date for development, operation, or both of the highway facility;

(ii) the proposed term of the lease over sovereign lakebed lands; and

(iii) a demonstration by the private entity that the proposal is financially viable;

(h) the names and addresses of the persons who may be contacted for further information concerning the highway facility application;

(i) any other material or information that the commission requires by rules made under this section; and

(j) a statement whether or how the highway facility can safely accommodate recreational fishing or other recreational activities on the highway facility.

(4) The commission is not required to review an application submitted under this section if it determines that the proposal does not meet the guidelines established under this section.

(5) The commission shall review an application submitted under this section and approve the application if the commission determines, based upon recommendations by the department, that:

(a) construction, operation, and maintenance of the highway facility is feasible as proposed by the private entity in the application;

(b) the proposed highway facility is contained anywhere within the long-range highway plan prepared by the department or by a metropolitan planning organization, including the visionary long-range highway plan;

(c) the construction plan for the proposed highway facility meets the engineering and design standards specified by the commission in rules made under this section;

(d) the proposed plan for the construction, operation, and maintenance of the highway facility is financially viable, including a determination that sufficient bonding or other financial assurances are in place to cover construction, operation, and maintenance of the facility; and

(e) the private entity has entered an agreement with the department authorizing the department to assure the safety of the design, construction, operation, and maintenance of the facility.

(6) Approval by the commission under this section does not constitute approval of the lease application by the Division of Forestry, Fire, and State Lands under Section 65A-7-5.

(7) An agreement under Subsection (5)(e):

(a) shall provide compensation to the department to cover the costs of reviewing and inspecting the highway facility; and

(b) may include a time within which a notice to proceed can be given.

(8) The department may establish a fee in accordance with Section 63J-1-504 for reviewing applications submitted under this section.

CHAPTER 257
H. B. 176
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

AUDIT OF STATE BUDGETS

Chief Sponsor: LaVar Christensen
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill requires the Office of Legislative Auditor General to audit certain state executive branch entities' budgets.

Highlighted Provisions:

This bill:

- requires the Office of Legislative Auditor General to audit entities in the executive branch as directed by the Legislative Audit Subcommittee;
- directs submission of audit reports;
- defines the responsibilities of the Office of Legislative Auditor General in conducting those audits; and
- provides a repeal date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:
36-12-15.1, Utah Code Annotated 1953
63I-2-236, Utah Code Annotated 1953

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

Section 1. Section 36-12-15.1 is enacted to read:

36-12-15.1. Budget and appropriation audits.

(1) As used in this section, "entity" means an entity in the executive branch that receives an ongoing line item appropriation in an appropriations act.

(2) The Office of Legislative Auditor General shall:

(a) each year perform an audit of at least two entities' appropriations, in addition to other audits performed by the Office of Legislative Auditor General, that evaluates:

(i) the extent to which the entity has efficiently and effectively used the appropriation by identifying:

(A) the entity's appropriation history;

(B) the entity's spending and efficiency history; and

(C) historic trends in the entity's operational performance effectiveness;

(ii) whether the entity's size and operation are commensurate with the entity's spending history; and

(iii) whether the entity is diligent in its stewardship of state resources;

(b) if possible, incorporate the audit methodology described in Subsection (2)(a) in other audits performed by the Office of Legislative Auditor General;

(c) conduct the audits described in Subsection (2)(a) according to the process established for the Audit Subcommittee created in Section 36-12-8;

(d) after release of an audit report by the Audit Subcommittee, make the audit report available to:

(i) each member of the Senate and the House of Representatives; and

(ii) the governor or the governor's designee; and

(e) summarize the findings of an audit described in Subsection (2)(a) in:

(i) a unique section of the legislative auditor general's annual report; and

(ii) a format that the legislative fiscal analyst may use in preparation of the annual appropriations no later than 30 days before the day on which the Legislature convenes.

(3) The Office of Legislative Auditor General shall consult with the legislative fiscal analyst in preparing the summary required by Subsection (2)(e).

(4) The Legislature, in evaluating an entity's request for an increase in its base budget, shall:

(a) review the audit report required by this section and any relevant audits; and

(b) consider the entity's request for an increase in its base budget in light of the agency's prior history of savings and efficiencies as evidenced by the audit report required by this section.

Section 2. Section 63I-2-236 is enacted to read:

63I-2-236. Repeal dates -- Title 36.

Section 36-12-15.1 is repealed July 1, 2013.

CHAPTER 258
H. B. 178
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

DISPATCHER SERVICE AMENDMENTS

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Peace Officer Standards and Training Act regarding the certification of dispatchers.

Highlighted Provisions:

This bill:

- modifies the definition of "good moral character";
- changes the time period for becoming inactive from one year to 18 months;
- provides for suspension of a dispatcher's certification if annual training is not satisfactorily completed;
- revises the process for the suspension or revocation of a dispatcher's certification, including:
  - authorizing the Peace Officer Standards and Training Council to suspend or revoke the certification of a dispatcher;
  - amending the grounds for suspension or revocation; and
  - providing procedures for adjudicative hearings, including burdens of proof and levels of proof required; and
- provides that if a dispatcher relinquishes certification when a disciplinary procedure against the dispatcher is pending, the dispatcher may not be certified again as a dispatcher in Utah.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-302, as last amended by Laws of Utah 2010, Chapters 283 and 324
53-6-304, as enacted by Laws of Utah 1995, Chapter 134
53-6-306, as enacted by Laws of Utah 1995, Chapter 134

ENACTS:

53-6-311, Utah Code Annotated 1953

REPEALS AND REENACTS:

53-6-309, as enacted by Laws of Utah 1995, Chapter 134

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

Section 1. Section 53-6-302 is amended to read:

53-6-302. Applicants for certification examination -- Requirements.

(1) Before being allowed to take a dispatcher certification examination, each applicant shall meet the following requirements:

(a) be a United States citizen;

(b) be 18 years of age or older at the time of employment as a dispatcher;

(c) be a high school graduate or have a G.E.D. equivalent;

(d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation; and

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duty as a dispatcher.

(2) (a) An application for certification shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

[~~(i) Conviction of any offense not serious enough to be covered under Subsection (1)(d), involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale, or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of certification or refusal to give a certification examination.~~]

[~~(ii) An applicant may be allowed to take a certification examination provisionally, pending completion of any background check or investigation required by thisSubsection (2)(b).~~]

(3) (a) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this section.

(b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

(4) Any background check or background investigation performed pursuant to the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant is considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-309(1).

Section 2. Section 53-6-304 is amended to read:

53-6-304. Waiver of training course requirement.

(1) The director may waive the required basic dispatcher training course and certify an applicant who:

(a) provides evidence that the applicant meets the requirements under Section 53-6-302, relating to qualifications for admission to the training course;

(b) provides evidence that the applicant has completed a basic dispatcher training program that, in the director's judgment, is equivalent to the course required for certification under this part; and

(c) passes [~~a written~~] the certification examination[~~, an oral examination, or both, that affirms the applicant's ability in public safety communications~~].

(2) An applicant who fails the examination under Subsection (1)(c) shall complete the basic dispatcher training course and pass the [~~dispatcher~~] certification examination to become certified.

Section 3. Section 53-6-306 is amended to read:

53-6-306. Inactive and lapsed certificates -- Reinstatement -- Continuing education requirements.

(1) (a) The certificate of a dispatcher who has not been actively engaged in performing the duties of a dispatcher for [~~one year shall be~~] 18 consecutive months or more is designated "inactive."

[~~(b) If a dispatcher having an inactive certificate becomes reemployed or subsequently reengaged as a dispatcher, the dispatcher's certificate may be reissued or reinstated by the director upon successful completion by that dispatcher of the certification examination.~~]

[~~(c) The director may require a dispatcher with an inactive certificate to successfully complete the basic dispatcher training course before reissuing or reinstating certification.~~]

(b) A dispatcher whose certificate is inactive shall pass the certification examination before the certificate may be reissued or reinstated.

(2) (a) The certificate of a dispatcher who has not been actively engaged in performing the duties of a dispatcher for four continuous years shall be designated "lapsed."

(b) [~~Subject to Section 53-6-305, a~~] A dispatcher [~~having a lapsed~~] whose certificate has lapsed shall successfully complete the basic training course and pass the certification examination before the certificate may be reissued or reinstated.

(3) (a) A certified dispatcher shall complete annual training approved by the director of 20 hours or more.

[~~(b) (i) If a certified dispatcher does not complete the annual training requirement, then that dispatcher's certificate shall be designated "inactive," and after one year, shall be designated "lapsed."~~]

[~~(ii) The reinstatement of an inactive or a lapsed certificate under Subsection (3) shall be governed by rules made by the director.~~]

(b) If a dispatcher fails to satisfactorily complete the annual training, the dispatcher's certificate shall be suspended until any deficiency in the annual training is remedied.

Section 4. Section 53-6-309 is repealed and reenacted to read:

53-6-309. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

(1) The council has authority to suspend or revoke the certification of a dispatcher, if the dispatcher:

(a) willfully falsifies any information to obtain certification;

(b) has any physical or mental disability affecting the dispatcher's ability to perform duties;

(c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the addiction to the employer and to the director as part of a departmental early intervention process;

(d) engages in conduct that is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;

(e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning based on Garrity v. New Jersey, 385 U.S. 493 (1967); or

(f) engages in sexual conduct while on duty.

(2) The council may not suspend or revoke the certification of a dispatcher for a violation of the employing agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

(3) (a) The division is responsible for investigating dispatchers who are alleged to have engaged in conduct in violation of Subsection (1).

(b) The division shall initiate all adjudicative proceedings under this section by providing to the dispatcher involved notice and an opportunity for a hearing before an administrative law judge.

(c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.

(d) (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.

(ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof to establish the affirmative defense by a preponderance of the evidence.

(e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in violation of Subsection (1), the division shall present the findings and conclusions issued by the administrative law judge to the council.

(f) The division shall notify the agency that employs the involved dispatcher of the investigation and shall provide any information or comments concerning the dispatcher received from that agency regarding the dispatcher to the council before a dispatcher's certification may be suspended or revoked.

(g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

(4) (a) The council shall review the findings of fact and conclusions of law and the information concerning the dispatcher provided by the dispatcher's employing agency and determine whether to suspend or revoke the dispatcher's certification.

(b) A council member shall recuse himself or herself from consideration of an issue that is before the council if the council member:

(i) has a personal bias for or against the dispatcher;

(ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or

(iii) employs, supervises, or works for the same agency as the dispatcher whose case is before the council.

(5) (a) Termination of a dispatcher, whether voluntary or involuntary, does not preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher was terminated for any of the reasons under Subsection (1).

(b) Employment by another agency, or reinstatement of a dispatcher by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher was terminated for any of the reasons under Subsection (1).

(6) An agency that is made aware of an allegation against a dispatcher employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Section 5. Section 53-6-311 is enacted to read:

53-6-311. Voluntary relinquishment of dispatcher certification.

(1) (a) A dispatcher may voluntarily relinquish the dispatcher's certification to the division at any time when a disciplinary issue regarding the dispatcher has been referred to the division.

(b) A dispatcher who voluntarily relinquishes certification under this Subsection (1) may not subsequently be certified as a dispatcher in Utah.

(2) Subsection (1) does not apply to a dispatcher whose certification has become inactive as provided in Section 53-6-306.

CHAPTER 259
H. B. 184
Passed March 4, 2011
Approved March 23, 2011
Effective May 10, 2011

MOTOR AND SPECIAL FUEL TAX ACT AMENDMENTS

Chief Sponsor: Christopher N. Herrod
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to a tax on liquified natural gas.

Highlighted Provisions:

This bill:

- amends the definition of clean fuel;
- provides that beginning on July 1, 2011, a tax is imposed at a reduced rate on liquified natural gas per gasoline gallon equivalent; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-13-102, as last amended by Laws of Utah 2000, Chapter 258
59-13-301, as last amended by Laws of Utah 2008, Chapters 153 and 382

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

Section 1. Section 59-13-102 is amended to read:

59-13-102. Definitions.

As used in this chapter:

(1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the operation of aircraft.

(2) "Clean fuel" means:

(a) the following special fuels:

(i) propane;

(ii) compressed natural gas; [~~or~~]

(iii) liquified natural gas; or

[~~(iii)~~] (iv) electricity; or

(b) any motor or special fuel that meets the clean fuel vehicle standards in the federal clean Air Act Amendments of 1990, Title II.

(3) "Commission" means the State Tax Commission.

(4) (a) "Diesel fuel" means any liquid that is commonly or commercially known, offered for sale, or used as a fuel in diesel engines.

(b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

(5) "Distributor" means any person in this state who:

(a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at retail or wholesale;

(b) produces, refines, manufactures, or compounds motor fuel in this state for use, distribution, or sale in this state;

(c) is engaged in the business of purchasing motor fuel for resale in wholesale quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability; or

(d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

(i) federally certificated air carriers; and

(ii) other persons.

(6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations and that is considered destined for nontaxable off-highway use.

(7) "Exchange agreement" means an agreement between licensed suppliers where one is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the loading rack of the terminal where the delivering supplier holds an inventory position.

(8) "Federally certificated air carrier" means a person who holds a certificate issued by the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or scheduled operation, as defined in 14 C.F.R. Sec. 119.3.

(9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is generally used in an engine or motor for the generation of power, including aviation fuel, clean fuel, diesel fuel, motor fuel, and special fuel.

(10) "Highway" means every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel notwithstanding that the way or place may be temporarily closed for the purpose of construction, maintenance, or repair.

(11) "Motor fuel" means fuel that is commonly or commercially known or sold as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

(12) "Motor fuels received" means:

(a) motor fuels that have been loaded at the refinery or other place into tank cars, placed in any

tank at the refinery from which any withdrawals are made directly into tank trucks, tank wagons, or other types of transportation equipment, containers, or facilities other than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not involving transportation are made directly; or

(b) motor fuels that have been imported by any person into the state from any other state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when, and the place where, the interstate transportation of the motor fuel is completed within the state by the person who at the time of the delivery is the owner of the motor fuel.

(13) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used, designed, or maintained for transportation of persons or property which:

(i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds;

(ii) has three or more axles regardless of weight; or

(iii) is used in a combination of vehicles when the weight of the combination of vehicles exceeds 26,000 pounds gross vehicle weight.

(b) "Qualified motor vehicle" does not include a recreational vehicle not used in connection with any business activity.

(14) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a refinery or terminal into a motor vehicle, rail car, or vessel.

(15) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal does not include:

(a) loss by evaporation or destruction; or

(b) transfers between refineries, racks, or terminals.

(16) (a) "Special fuel" means any fuel regardless of name or character that:

(i) is usable as fuel to operate or propel a motor vehicle upon the public highways of the state; and

(ii) is not taxed under the category of aviation or motor fuel.

(b) Special fuel includes:

(i) fuels that are not conveniently measurable on a gallonage basis; and

(ii) diesel fuel.

(17) "Supplier," as used in Part 3, Special Fuel, means a person who:

(a) imports or acquires immediately upon importation into this state diesel fuel from within or without a state, territory, or possession of the United States or the District of Columbia;

(b) produces, manufactures, refines, or blends diesel fuel in this state;

(c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to which there has been no previous taxable sale or use; or

(d) is in a two party exchange where the receiving party is deemed to be the supplier.

(18) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.

(19) "Two party exchange" means a transaction in which special fuel is transferred between licensed suppliers pursuant to an exchange agreement.

(20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations.

(21) "Use," as used in Part 3, Special Fuel, means the consumption of special fuel for the operation or propulsion of a motor vehicle upon the public highways of the state and includes the reception of special fuel into the fuel supply tank of a motor vehicle.

(22) "User," as used in Part 3, Special Fuel, means any person who uses special fuel within this state in an engine or motor for the generation of power to operate or propel a motor vehicle upon the public highways of the state.

(23) "Ute tribal member" means an enrolled member of the Ute tribe.

(24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(25) "Ute trust land" means the lands:

(a) of the Uintah and Ouray Reservation that are held in trust by the United States for the benefit of:

(i) the Ute tribe;

(ii) an individual; or

(iii) a group of individuals; or

(b) specified as trust land by agreement between the governor and the Ute tribe meeting the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

Section 2. Section 59-13-301 is amended to read:

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

(i) removal of undyed diesel fuel from any refinery;

(ii) removal of undyed diesel fuel from any terminal;

(iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;

(iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;

(v) any untaxed special fuel blended with undyed diesel fuel; or

(vi) use of untaxed special fuel other than propane or electricity.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

(ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

(i) [~~is~~] sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;

(ii) [~~is~~] exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) [~~is~~] used in a vehicle off-highway;

(iv) [~~is~~] used to operate a power take-off unit of a vehicle;

(v) [~~is~~] used for off-highway agricultural uses;

(vi) [~~is~~] used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) [~~is~~] used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

(a) (i) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(ii) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act; or

(b) propane or electricity.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.

(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the special fuel tax.

(c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303 may be used by the commission as a dedicated credit to cover the costs of electronic credentialing as provided in Section 41-1a-303.

(8) The commission may either collect no tax on special fuel exported from the state or, upon application, refund the tax paid.

(9) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of special fuel and has paid the tax on the special fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund in a manner prescribed by the commission.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (9)(a).

(10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as provided in Subsection (9) and this Subsection (10).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund for off-highway and nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

(c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural uses shall be made in accordance with the tax return procedures under Section 59-13-202.

(11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is reduced to the extent provided in Subsection (11)(b) if:

(i) the Navajo Nation imposes a tax on the special fuel;

(ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (11) for the administration of the reduction of tax.

(b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that difference is greater than $0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (11)(b)(ii) is less than or equal to $0.

(ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the special fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the special fuel.

(c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the special fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (11).

(e) The agreement required under Subsection (11)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (11); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (11)(f)(ii).

(ii) The notice described in Subsection (11)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on special fuel;

(B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

(g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not permitted under this Subsection (11) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (11) and the agreement required by Subsection (11)(a), this Subsection (11) governs.

(12) (a) Beginning on January 1, 2009, a tax imposed under this section on compressed natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a).

(b) Beginning on July 1, 2011, a tax imposed under this section on liquified natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a).

CHAPTER 260
H. B. 187
Passed February 10, 2011
Approved March 23, 2011
Effective May 10, 2011

STATE FIRE CODE APPEALS

Chief Sponsor: Michael T. Morley
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Fire Prevention and Fireworks Act to address appeals of inspections.

Highlighted Provisions:

This bill:

- requires a notice of appeal rights on the application for a permit;
- requires a county, city, or town to establish appeal processes;
- establishes requirements related to an appeal process; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-7-209, as last amended by Laws of Utah 2010, Chapter 310

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

Section 1. Section 53-7-209 is amended to read:

53-7-209. Inspection of buildings by officials -- Review of residential inspections.

(1) As used in this section, "International Fire Code" means the edition of the International Fire Code adopted by the Legislature with the amendments and additions in the State Fire Code.

[~~(1)~~] (2) A fire chief or officer may enter a building or premises not used as a private dwelling at any reasonable hour to inspect the building or premises and enforce the rules made under this part and the state fire code.

[~~(2)~~] (3) The owner, lessee, manager, or operator of a building or premises not used as a private dwelling shall permit inspections under this section.

(4) (a) Subject to Subsection (4)(b), a county, city, or town shall, by ordinance, provide for review of an inspection conducted by the county's, city's, or town's fire chief or officer for a single-family residence within 30 days of the notice of the fire code compliance inspection.

(b) Upon request by a person who owns or is building a single-family residence, a chief executive officer of the county, city, or town in which is located the single-family residence, or the chief executive officer's designee, shall, with reasonable diligence, review an inspection described in Subsection (4)(a) to determine whether the inspection constitutes a fair administration of the State Fire Code.

(c) A review described in this section:

(i) is separate and unrelated to an appeal under the International Fire Code;

(ii) may not be used to review a matter that may be brought by appeal under the International Fire Code;

(iii) may not result in the waiver or modification of a State Fire Code requirement or standard; and

(iv) does not prohibit a person from bringing an appeal under the International Fire Code.

(d) A person who seeks a review described in this Subsection (4) may not be prohibited by preclusion, estoppel, or otherwise from raising an issue or bringing a claim in an appeal under the International Fire Code on the grounds that the person raised the issue or brought the claim in the review described in this section.

CHAPTER 261
H. B. 188
Passed February 7, 2011
Approved March 23, 2011
Effective May 10, 2011

LABOR COMMISSION RELATED AMENDMENTS

Chief Sponsor: Michael T. Morley
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Utah Labor Code to address the ability to serve, file, or deliver documents.

Highlighted Provisions:

This bill:

- permits a document to be served, filed, or delivered electronically as provided by rule; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-1-304, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 34A-1-304 is amended to read:

34A-1-304. Definitions -- Rulemaking -- Electronic or similar methods of proceedings.

(1) For purposes of this section:

(a) "Deliver" means to serve, file, or otherwise provide a document.

(b) "Document" includes a notice, order, decision, or other document that is required or permitted by a relevant statute.

(c) "Relevant statute" means a provision of:

(i) this title;

(ii) Title 34, Labor in General, for which the commissioner has regulatory authority;

(iii) Title 40, Chapter 2, Coal Mine Safety Act; or

(iv) Title 57, Chapter 21, Utah Fair Housing Act.

[~~(1)~~] (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing adjudicative procedures under a relevant statute, including [~~the forms of notices~~] providing the form of a notice and the manner of serving a notice [~~in all claims~~].

(b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, [~~the rules~~] a rule made under this section [~~are~~] is not required to conform to common law or statutory rules of evidence or other technical rules of procedure.

[~~(2)~~] (3) The rules made under this section shall protect the rights of the parties and include procedures to:

(a) dispose of [~~cases~~] a case informally[~~,~~] or [~~to~~] expedite claims adjudication[~~,~~];

(b) narrow issues[~~,~~]; and

(c) simplify the methods of proof at [~~hearings~~] a hearing.

[~~(3)~~] (4) The commission may by rule permit [~~hearings or other adjudicative proceedings~~] a hearing or other adjudicative proceeding to be conducted, recorded, or published by [~~means of electronic devices or other similar methods~~] an electronic means or similar method.

(5) Notwithstanding whether a relevant statute requires that a document be delivered by mail or otherwise, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, permit a document to be delivered by electronic means pursuant to the rule.

CHAPTER 262
H. B. 194
Passed March 2, 2011
Approved March 23, 2011
Effective July 1, 2011

SERVICE CONTRACTS ACT AMENDMENTS

Chief Sponsor: Johnny Anderson
Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies the Service Contracts Act to address regulation of automatic renewals.

Highlighted Provisions:

This bill:

- modifies definitions;
- addresses notice requirements;
- addresses remedy provisions; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

15-10-102, as last amended by Laws of Utah 2006, Chapter 167
15-10-201, as last amended by Laws of Utah 2006, Chapter 167
15-10-202, as enacted by Laws of Utah 2003, Chapter 46

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

Section 1. Section 15-10-102 is amended to read:

15-10-102. Definitions.

As used in this chapter:

(1) "Automatic renewal provision" means a provision under which a service contract is renewed for [~~a~~] one or more specified [~~period~~] periods if:

(a) the renewal causes the service contract to be in effect more than six months after the day of the initiation of the service contract; and

(b) the renewal is effective unless the consumer gives notice to the seller of the consumer's intention to terminate the service contract.

(2) "Business consumer" means a person engaged in business if the person enters into a service contract as part of the person's business activities.

[~~(2)~~] (3) (a) [~~Except as provided in Subsection (2)(c), "consumer"~~] "Consumer" means a person receiving service, maintenance, or repair under a service contract.

(b) "Consumer" includes a representative of an association subject to:

(i) Title 57, Chapter 8, Condominium Ownership Act; or

(ii) Title 57, Chapter 8a, Community Association Act.

[~~(c) "Consumer" does not include a person engaged in business for profit if the person enters into the service contract as part of the person's business activities.~~]

[~~(3)~~] (4) "Seller" means a person providing service, maintenance, or repair under a service contract.

[~~(4)~~] (5) (a) "Service contract" means [~~any~~] a contract for service, maintenance, or repair:

(i) in connection with [~~any~~] real property; or

(ii) that provides a benefit to [~~any~~] the real property.

(b) "Service contract" does not include a contract affecting any right, title, estate, or interest in real property, including:

(i) a fee title interest;

(ii) a leasehold interest;

(iii) an option contract relating to real property;

(iv) a real estate purchase contract;

(v) an easement; or

(vi) any other real property interest governed by Title 57, Real Estate.

Section 2. Section 15-10-201 is amended to read:

15-10-201. Notice requirement.

(1) [~~A~~] Except as provided in Subsection (1)(b), a service contract may not contain an automatic renewal provision unless the seller provides the consumer written notice complying with Subsection (2) that informs the consumer of the automatic renewal provision.

(2) (a) For a service contract executed on or after July 1, 2011, that exceeds 12 months for a renewal period, a seller shall provide written notice of an automatic renewal provision prominently displayed on the first page of the service contract.

[~~(2) (a) The~~] (b) In addition to complying with Subsection (2)(a), a seller shall provide [~~the~~] written notice required under Subsection (1) to the consumer:

(i) personally;

(ii) by certified mail; or

(iii) prominently displayed on the first page of a monthly statement.

[~~(b) (i) The~~] (c) (i) A seller shall provide [~~the~~] written notice [~~required~~] under Subsection [~~(1)~~] (2)(b):

(A) no later than 30 calendar days before the last day on which the consumer may give notice of the consumer's intention to terminate the service contract; and

(B) no sooner than 90 calendar days before the last day on which the consumer may give notice of the consumer's intention to terminate the service contract.

(ii) [~~The~~] A seller may not provide [~~the~~] written notice required under Subsection (1) except:

(A) as provided in Subsection (2)(a); or

(B) during the time period described in Subsection [~~(2)(b)(i)~~] (2)(c)(i).

[~~(c) The written~~] (d) Written notice required under Subsection (1) shall be:

(i) written in clear and understandable language; and

(ii) printed in an easy-to-read type size and style.

Section 3. Section 15-10-202 is amended to read:

15-10-202. Remedy for violation.

[~~If~~] (1) Subject to Subsection (2), if a seller does not comply with Section 15-10-201 with respect to a service contract containing an automatic renewal provision:

[~~(1)~~] (a) the automatic renewal provision is void and unconscionable as a matter of public policy; and

[~~(2)~~] (b) the service contract shall automatically renew on a month-to-month basis.

(2) Subsection (1) applies to an automatic renewal provision in a service contract with a business consumer for which a seller does not comply with Section 15-10-201 only if the service contract is executed on or after July 1, 2011.

Section 4. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 263
H. B. 196
Passed February 17, 2011
Approved March 23, 2011
Effective May 10, 2011

CONTINUING EDUCATION REQUIREMENTS FOR LANDSCAPE ARCHITECTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill amends the Landscape Architects Licensing Act by providing for a continuing education licensing requirement in accordance with standards defined by rule by the Division of Occupational and Professional Licensing.

Highlighted Provisions:

This bill:

- provides that a person licensed as a landscape architect shall complete continuing education requirements during each licensing period in accordance with standards defined by rule of the Division of Occupational and Professional Licensing.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-53-303, as renumbered and amended by Laws of Utah 1998, Chapter 191

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

Section 1. Section 58-53-303 is amended to read:

58-53-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.

(b) The division may by renewal extend or shorten a license expiration date by as much as one year to stagger the renewal cycles it administers.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

(3) Each person holding a current license issued under this chapter shall complete in each period of licensure a program of qualifying continuing professional education in accordance with standards defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

CHAPTER 264
H. B. 206
Passed February 18, 2011
Approved March 23, 2011
Effective July 1, 2011

SPECIAL GROUP LICENSE PLATE AMENDMENTS

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code by amending provisions relating to special group license plates.

Highlighted Provisions:

This bill:

- prohibits the Motor Vehicle Division from issuing a new support special group license plate unless the division receives a minimum number of applications and required fees;
- prohibits the Motor Vehicle Division from issuing an existing support special group license plate to a new applicant in certain circumstances;
- repeals provisions that authorize the Tax Commission to issue a new type of special group license plate in certain circumstances; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

41-1a-418, as last amended by Laws of Utah 2010, Chapters 139, 166, and 369

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

Section 1. Section 41-1a-418 is amended to read:

41-1a-418. Authorized special group license plates.

(1) The division shall only issue special group license plates in accordance with this section through Section 41-1a-422 to a person who is specified under this section within the categories listed as follows:

(a) disability special group license plates issued in accordance with Section 41-1a-420;

(b) honor special group license plates, as in a war hero, which plates are issued for a:

(i) survivor of the Japanese attack on Pearl Harbor;

(ii) former prisoner of war;

(iii) recipient of a Purple Heart;

(iv) disabled veteran; or

(v) recipient of a gold star award issued by the United States Secretary of Defense;

(c) unique vehicle type special group license plates, as for historical, collectors value, or other unique vehicle type, which plates are issued for:

(i) a special interest vehicle;

(ii) a vintage vehicle;

(iii) a farm truck; or

(iv) (A) until Subsection (1)(c)(iv)(B) applies, a vehicle powered by clean fuel as defined in Section 59-13-102; or

(B) beginning on the effective date of rules made by the Department of Transportation authorized under Subsection 41-6a-702(5)(b), a vehicle powered by clean fuel that meets the standards established by the Department of Transportation in rules authorized under Subsection 41-6a-702(5)(b);

(d) recognition special group license plates, as in a public official or an emergency service giver, which plates are issued for a:

(i) current member of the Legislature;

(ii) current member of the United States Congress;

(iii) current member of the National Guard;

(iv) licensed amateur radio operator;

(v) currently employed, volunteer, or retired firefighter until June 30, 2009;

(vi) emergency medical technician;

(vii) current member of a search and rescue team; or

(viii) current honorary consulate designated by the United States Department of State; and

(e) support special group license plates, as for a contributor to an institution or cause, which plates are issued for a contributor to:

(i) an institution's scholastic scholarship fund;

(ii) the Division of Wildlife Resources;

(iii) the Department of Veterans' Affairs;

(iv) the Division of Parks and Recreation;

(v) the Department of Agriculture and Food;

(vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;

(vii) the Boy Scouts of America;

(viii) spay and neuter programs through No More Homeless Pets in Utah;

(ix) the Boys and Girls Clubs of America;

(x) Utah public education;

(xi) programs that provide support to organizations that create affordable housing for those in severe need through the Division of Real Estate;

(xii) the Department of Public Safety;

(xiii) programs that support Zion National Park;

(xiv) beginning on July 1, 2009, programs that provide support to firefighter organizations;

(xv) programs that promote bicycle operation and safety awareness;

(xvi) programs that conduct or support cancer research;

(xvii) programs that create or support autism awareness; or

(xviii) programs that create or support humanitarian service and educational and cultural exchanges.

(2) (a) [~~Beginning January 1, 2003, the~~] The division may not issue a new type of special group license plate unless the division receives:

(i) (A) a start-up fee established under Section 63J-1-504 for production and administrative costs for providing the new special group license plates; or

[~~(ii)~~] (B) a legislative appropriation for the start-up fee provided under Subsection (2)(a)(i)(A)[~~.~~]; and

(ii) beginning on January 1, 2012, and for the issuance of a support special group license plate authorized in Section 41-1a-422, at least 500 completed applications for the new type of support special group license plate to be issued with all fees required under this part for the support special group license plate issuance paid by each applicant.

(b) (i) Beginning on January 1, 2012, each participating organization shall collect and hold applications for support special group license plates authorized in Section 41-1a-422 on or after January 1, 2012, until it has received at least 500 applications.

(ii) Once a participating organization has received at least 500 applications, it shall submit the applications, along with the necessary fees, to the division for the division to begin working on the design and issuance of the new type of support special group license plate to be issued.

(iii) Beginning on January 1, 2012, the division may not work on the issuance or design of a new support special group license plate authorized in Section 41-1a-422 until the applications and fees required under this Subsection (2) have been received by the division.

(iv) The division shall begin issuance of a new support special group license plate authorized in Section 41-1a-422 on or after January 1, 2012, no later than six months after receiving the applications and fees required under this Subsection (2).

[~~(b)~~] (c) (i) Beginning on July 1, 2009, the division may not renew a motor vehicle registration of a motor vehicle that has been issued a firefighter recognition special group license plate unless the applicant is a contributor as defined in Subsection 41-1a-422(1)(a)(ii)(D) to the Firefighter Support Restricted Account.

(ii) A registered owner of a vehicle that has been issued a firefighter recognition special group license plate prior to July 1, 2009, upon renewal of the owner's motor vehicle registration shall:

(A) be a contributor to the Firefighter Support Restricted Account as required under Subsection (2)(b)(i); or

(B) replace the firefighter recognition special group license plate with a new license plate.

[~~(3) (a) A sponsoring organization that qualifies for tax-exempt status under Internal Revenue Code Section 501(c)(3) may request the commission to authorize a new type of special group license plate for the sponsoring organization. The sponsoring organization shall:~~]

[~~(i) collect a minimum of 200 applications; and~~]

[~~(ii) pay a start-up fee established under Section 63J-1-504 for production and administrative costs for providing the new type of special group license plates.~~]

[~~(b) If the provisions of Subsection (3)(a) are met, the commission shall approve the request and the division shall:~~]

[~~(i) design a license plate in accordance with Section 41-1a-419; and~~]

[~~(ii) issue the new type of special group license plates.~~]

(3) (a) Beginning on July 1, 2011, if a support special group license plate type authorized in Section 41-1a-422 and issued prior to January 1, 2012, has less than 500 license plates issued each year for a three consecutive year time period that begins on July 1, the division may not issue that type of support special group license plate to a new applicant beginning on January 1 of the following calendar year after the three consecutive year period for which that type of support special group license plate has less than 500 license plates issued each year.

(b) If the division is required to stop the issuance of a type of support special group license plate authorized in Section 41-1a-422 under this Subsection (3), the division shall report to the Transportation Interim Committee that the division will stop the issuance on or before the November interim meeting of the year in which the commission determines to stop the issuance of that type of support special group license plate.

(4) (a) Beginning on July 1, 2011, if a support special group license plate type authorized in Section 41-1a-422 and issued on or after January 1, 2012, has less than 500 license plates issued each year for a three consecutive year time period that begins on July 1, the division may not issue that type of support special group license plate to a new applicant beginning on January 1 of the following calendar year after the three consecutive year time period for which that type of support special group

license plate has less than 500 license plates issued each year.

(b) If the division is required to stop the issuance of a type of support special group license plate authorized in Section 41-1a-422 under this Subsection (4), the division shall report to the Transportation Interim Committee that the division will stop the issuance on or before the November interim meeting of the year in which the commission determines to stop the issuance of that type of support special group license plate.

Section 2. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 265
H. B. 208
Passed February 18, 2011
Approved March 23, 2011
Effective May 10, 2011

ADMINISTRATIVE SERVICES AMENDMENTS

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by amending Child Welfare Defense Program provisions and creating a restricted special revenue fund.

Highlighted Provisions:

This bill:

- defines terms;
- changes the Office of Child Welfare Parental Defense in the Department of Administrative Services to a program administered by the department;
- allows the Department of Administrative Services to contract all or part of the program to a qualified contractor;
- creates the State Archives Fund, as a restricted special revenue fund;
- specifies what is deposited into the fund and uses of the fund;
- provides that the fund shall earn interest; and
- provides that state archives shall report on the use of the fund as part of the annual budget process.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-1-109, as last amended by Laws of Utah 2006, Chapter 139
63A-11-101, as enacted by Laws of Utah 2004, Chapter 356
63A-11-102, as last amended by Laws of Utah 2008, Chapter 3
63A-11-103, as enacted by Laws of Utah 2004, Chapter 356
63A-11-104, as last amended by Laws of Utah 2010, Chapter 341
63A-11-105, as last amended by Laws of Utah 2006, Chapter 76
63A-11-106, as enacted by Laws of Utah 2004, Chapter 356
63A-11-201, as last amended by Laws of Utah 2008, Chapter 3
63A-11-202, as last amended by Laws of Utah 2009, Chapter 32
63A-11-203, as last amended by Laws of Utah 2006, Chapter 76
63A-11-204, as last amended by Laws of Utah 2008, Chapter 382
63A-12-100.5, as enacted by Laws of Utah 2010, Chapter 258
78A-6-1111, as last amended by Laws of Utah 2010, Chapter 368

ENACTS:

63A-12-109, Utah Code Annotated 1953

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

Section 1. Section 63A-1-109 is amended to read:

63A-1-109. Divisions of department -- Administration.

(1) The department shall be composed of the following divisions:

(a) administrative rules;

(b) archives and records;

(c) facilities construction and management;

(d) finance;

(e) fleet operations;

(f) office of state debt collection;

(g) state purchasing and general services; and

(h) risk management[~~; and~~].

[~~(i) office of child welfare parental defense.~~]

(2) Each division shall be administered and managed by a division director.

Section 2. Section 63A-11-101 is amended to read:

CHAPTER 11. CHILD WELFARE PARENTAL DEFENSE PROGRAM

Part 1. General Provisions

63A-11-101. Title.

This chapter is known as the[~~ "Office of~~] "Child Welfare Parental Defense Program."

Section 3. Section 63A-11-102 is amended to read:

63A-11-102. Definitions.

For purposes of this chapter:

(1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings or Part 5, Termination of Parental Rights Act.

(2) "Contracted parental defense attorney" means a parental defense attorney who is under contract with the [~~office~~] department to provide parental defense in child welfare cases.

[~~(3) "Director" means the director of the office.~~]

[~~(4)~~] (3) "Fund" means the Child Welfare Parental Defense Fund established in Section 63A-11-203.

[~~(5) "Office" means the Office of Child Welfare Parental Defense created in Section 63A-11-103.~~]

[~~(6)~~] (4) "Parental defense attorney" means an attorney, law firm, or group of attorneys who:

(a) are authorized to practice law in Utah; and

(b) provide legal representation under contract with the [~~office~~] department, or a county in the state, to a parent who is a party in a child welfare case.

(5) "Program" means the Child Welfare Parental Defense Program created in Section 63A-11-103.

Section 4. Section 63A-11-103 is amended to read:

63A-11-103. Creation of program.

There is created within the [~~Department of Administrative Services~~] department, the [~~Office of~~] Child Welfare Parental Defense Program.

Section 5. Section 63A-11-104 is amended to read:

63A-11-104. Program -- Duties -- Contracting.

[~~(1) Except as provided in Subsection (2):~~]

[~~(a) The executive director of the department shall appoint the director of the office with the approval of the governor.~~]

[~~(b) The director shall be an attorney licensed to practice law in the state.~~]

[~~(2) Notwithstanding Subsection (1), if the executive director does not appoint a director of the office, the executive director:~~]

[~~(a) shall be the director of the office;~~]

[~~(b) is not required to be an attorney;~~]

[~~(c) may not engage in the practice of law, unless the executive director is an attorney licensed to practice law in the state; and~~]

[~~(d) may not receive a salary from the state in excess of the salary established for the executive director by the governor under Section 67-22-2.~~]

[~~(3)~~] (1) The [~~director~~] department shall:

(a) except as provided under Subsection (2), administer and enforce this chapter;

(b) manage the operation and budget of the [~~office~~] program; and

(c) if the department operates the [~~office~~] program as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee.

[~~(4) The director may employ staff.~~]

(2) The department may contract with:

(a) a qualified person to perform the program duties assigned by this chapter; and

(b) an attorney authorized to practice law in the state, as an independent contractor, to serve as a parental defense attorney as provided under Section 63A-11-201.

Section 6. Section 63A-11-105 is amended to read:

63A-11-105. Program -- Duties, functions, and responsibilities.

[~~(1) The duties, functions, and responsibilities of the office include the following:~~]

The department shall:

[~~(a) to~~] (1) provide assistance and advice to parental defense attorneys;

[~~(b) to~~] (2) develop and provide educational and training programs for parental defense attorneys; and

[~~(c) to~~] (3) provide information and advice to assist parental defense attorneys to comply with their professional, contractual, and ethical duties.

[~~(2) The director may contract with a qualified person to fulfill the requirements of Subsection (1).~~]

[~~(3) The office may develop and enter into contracts with attorneys authorized to practice law in the state, as independent contractors, to serve as parental defense attorneys.~~]

Section 7. Section 63A-11-106 is amended to read:

63A-11-106. Annual report -- Budget.

(1) On or before the 1st day of October each year, the executive director shall report to the governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the preceding fiscal year on the operations, activities, and goals of the [~~office~~] program.

(2) The executive director shall prepare [~~and submit to the executive director~~] a budget of:

(a) the administrative expenses for the [~~office~~] program; and

(b) the amount estimated to fund needed [~~contracted parental defense attorneys~~] contracts and other costs.

Section 8. Section 63A-11-201 is amended to read:

Part 2. Child Welfare Parental Defense Contracts

63A-11-201. Child welfare parental defense contracts -- Qualifications.

(1) The [~~office~~] department may enter into contracts with qualified parental defense attorneys to provide services for an indigent parent or parents who are the subject of a petition alleging abuse, neglect, or dependency, and will require a parental defense attorney [~~pursuant to~~] under Section 78A-6-1111.

(2) Payment for the representation, costs, and expenses of a contracted parental defense attorney

shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-203.

(3) The parental defense attorney shall maintain the minimum qualifications as provided by this chapter.

Section 9. Section 63A-11-202 is amended to read:

63A-11-202. Contracted parental defense attorney.

(1) [~~With respect to~~] For child welfare cases, a contracted parental defense attorney shall:

(a) adequately prepare for and attend all court hearings, including initial and continued shelter hearings and mediations;

(b) fully advise the client of the nature of the proceedings and of the client's rights, communicate to the client any offers of settlement or compromise, and advise the client regarding the reasonably foreseeable consequences of any course of action in the proceedings;

(c) be reasonably available to consult with the client outside of court proceedings;

(d) where attendance of a parental defense attorney is reasonably needed, attend meetings regarding the client's case with representatives of one or more of the Division of Child and Family Services, the Office of the Attorney General, and the Office of Guardian Ad Litem;

(e) represent the interest of the client at all stages of the proceedings before the trial court; and

(f) participate in the training courses and otherwise maintain the standards described in Subsection (3).

(2) If the [~~office~~] department enters into a contract with an attorney under Section [~~63A-11-105~~] 63A-11-201, the contract shall require that each attorney in the firm who will provide representation of parents in child welfare cases under the contract perform the duties described in Subsection (1).

(3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense attorney shall meet the standards developed by the [~~director~~] department, which may include:

(i) completion of a basic training course provided by the [~~office~~] program;

(ii) experience in child welfare cases; and

(iii) participation each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [~~director~~] department may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has equivalent training or adequate experience.

(4) Payment for the representation, costs, and expenses of the contracted parental defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-203.

Section 10. Section 63A-11-203 is amended to read:

63A-11-203. Child Welfare Parental Defense Fund -- Creation.

(1) There is created a nonlapsing, restricted special revenue fund known as the "Child Welfare Parental Defense Fund."

(2) Subject to availability, the [~~director~~] department may make distributions from the fund as required in this chapter for the following purposes:

(a) to pay for the representation, costs, expert witness fees, and expenses of contracted parental defense attorneys who are under contract with the [~~office~~] department to provide parental defense in child welfare cases for the indigent parent or parents that are the subject of a petition alleging abuse, neglect, or dependency;

(b) for administrative costs [~~pursuant to~~] under this chapter; and

(c) for reasonable expenses directly related to the functioning of the [~~office~~] program, including training and travel expenses.

(3) The fund consists of:

(a) appropriations made to the fund by the Legislature;

(b) interest and earnings from the investment of fund money;

(c) proceeds deposited by participating counties [~~pursuant to~~] under Section 63A-11-204; and

(d) private contributions to the Child Welfare Parental Defense Fund.

(4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(5) (a) If the [~~director~~] department anticipates a deficit in the fund during any fiscal year:

(i) the [~~director~~] department shall request an appropriation from the Legislature; and

(ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the deficit.

(b) If the anticipated deficit is not funded by the Legislature, the [~~director~~] department may request an interim assessment to participating counties to fund the anticipated deficit.

Section 11. Section 63A-11-204 is amended to read:

63A-11-204. Agreements for coverage by the Child Welfare Parental Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.

(1) A county legislative body and the [~~office~~] department may annually enter into a written agreement for the [~~office~~] department to provide parental defense attorney services in the county out of the Child Welfare Parental Defense Fund.

(2) An agreement described in Subsection (1) shall provide that the county shall pay into the fund an amount defined by a formula established in rule by the [~~office~~] department.

(3) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2).

(b) The amount of the equity payment described in Subsection (3)(a) shall be determined by the [~~office pursuant to~~] department under rules established by the [~~office~~] department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The agreement shall provide for revocation of the agreement for failure to pay assessments on the due date established by rule.

(5) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county or coverage from the fund.

Section 12. Section 63A-12-100.5 is amended to read:

63A-12-100.5. Definitions.

[~~The~~] (1) Except as provided under Subsection (2), the definitions in Section 63G-2-103 apply to this chapter.

(2) As used in this chapter, "division" or "state archives" means the Division of Archives and Records Service.

Section 13. Section 63A-12-109 is enacted to read:

63A-12-109. State Archives Fund created -- Donations -- Use of money -- Reporting.

(1) There is created a restricted special revenue fund known as the "State Archives Fund."

(2) The fund consists of money or other assets deposited in the fund from:

(a) a donation;

(b) a deposit;

(c) a contribution;

(d) a gift;

(e) an endowment;

(f) a devise; and

(g) a bequest of real property, personal property, or service.

(3) The division shall use the fund money for:

(a) the purpose specified by the grantor, if any; or

(b) if no purpose is specified by the grantor, the preservation of and access to the archival records and exhibits.

(4) (a) The fund shall earn interest.

(b) The state treasurer shall deposit all interest earned on money in the fund into the fund.

(5) The division shall annually report on the use of the fund to an appropriation subcommittee designated by the Executive Appropriations Committee as part of the appropriation subcommittee's budgetary process under Title 63J, Chapter 1, Budgetary Procedures Act.

Section 14. Section 78A-6-1111 is amended to read:

78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney.

(1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court, subject to the provisions of this section. The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.

(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a child in determining the indigency of the child.

(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.

(3) In the absence of contrary contractual provisions regarding the selection and appointment of parental defense counsel, the court shall select and appoint the attorney or attorneys if:

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent

legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general and the [~~Office of~~] Child Welfare Parental Defense Program created in Section 63A-11-103; and

(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.

(5) The indigent's mere preference for other counsel may not be considered a compelling reason justifying the appointment of a noncontracting attorney.

(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for some or all of the cost of appointed counsel.

(7) (a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for the cost of appointed counsel arising from any work of counsel that is not primarily directed at the state or the guardian ad litem.

(b) The court may not order reimbursement of the county pursuant to Subsection (7)(a) for the cost of appointed counsel arising from any work of counsel:

(i) that is specifically undertaken to defend against the filing of a petition to terminate parental rights, regardless of who filed the petition; and

(ii) that is undertaken after the petition to terminate parental rights has been filed.

(c) The state, or an agency of the state, may not be ordered to reimburse the county pursuant to Subsection (7)(a).

CHAPTER 266
H. B. 209
Passed February 10, 2011
Approved March 23, 2011
Effective May 10, 2011

WORKERS' COMPENSATION PREMIUM ASSESSMENT

Chief Sponsor: Michael T. Morley
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies provisions related to revenue and taxation to amend requirements related to the workers' compensation premium assessment.

Highlighted Provisions:

This bill:

- modifies the limits on the amount of the assessment; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13), as last amended by Laws of Utah 2009, Chapter 85

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

Section 1. Section 59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13) is amended to read:

59-9-101 (Subsec (2)(c)(iv) Repealed 07/01/13). Tax basis -- Rates -- Exemptions -- Rate reductions.

(1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), an admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.

(b) This Subsection (1) does not apply to:

(i) workers' compensation insurance, assessed under Subsection (2);

(ii) title insurance premiums taxed under Subsection (3);

(iii) annuity considerations;

(iv) insurance premiums paid by an institution within the state system of higher education as specified in Section 53B-1-102; and

(v) ocean marine insurance.

(c) The taxable premium under this Subsection (1) shall be reduced by:

(i) ~~[all]~~ the premiums returned or credited to policyholders on direct business subject to tax in this state;

(ii) ~~[all]~~ the premiums received for reinsurance of property or risks located in this state; and

(iii) the dividends, including premium reduction benefits maturing within the year:

(A) paid or credited to policyholders in this state; or

(B) applied in abatement or reduction of premiums due during the preceding calendar year.

(d) (i) For purposes of this Subsection (1)(d):

(A) "Utah variable life insurance premium" means an insurance premium paid:

(I) by:

(Aa) a corporation; or

(Bb) a trust established or funded by a corporation; and

(II) for variable life insurance covering risks located within the state.

(B) "Variable life insurance" means an insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of one or more separate accounts that are established and maintained by the insurer pursuant to Title 31A, Insurance Code.

(ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable life insurance premium shall be calculated as follows:

(A) 2-1/4% of the first $100,000 of Utah variable life insurance premiums:

(I) paid for each variable life insurance policy; and

(II) received by the admitted insurer in the preceding calendar year; and

(B) 0.08% of the Utah variable life insurance premiums that exceed $100,000:

(I) paid for the policy described in Subsection (1)(d)(ii)(A); and

(II) received by the admitted insurer in the preceding calendar year.

(iii) (A) On or before October 1, 2009, and every three years after October 1, 2009, the Revenue and Taxation Interim Committee shall study the rate reduction contained in this Subsection (1)(d).

(B) As part of the study required by Subsection (1)(d)(iii)(A) the Revenue and Taxation Interim Committee shall:

(I) hear testimony from the commission and industry representatives;

(II) make recommendations concerning whether the rate reduction should be continued, modified, or repealed; and

(III) make findings regarding:

(Aa) the cost of the rate reduction;

(Bb) the purpose and effectiveness of the rate reduction; and

(Cc) any benefits of the rate reduction to the state.

(2) (a) An admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment on the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2)[~~(a)~~];

(ii) on and after January 1, 2011, but on or before December 31, [~~2011~~] 2017, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2)[~~(a)~~]; and

[~~(iii) on and after January 1, 2012, but on or before December 31, 2012, an amount of equal to or greater than 1%, but equal to or less than 2.25% of the total workers' compensation premium income described in this Subsection (2)(a); and~~]

[~~(iv) on and after January 1, 2013, an amount of equal to or greater than 1%, but equal to or less than 1.25% of the total workers' compensation premium income described in this Subsection (2)(a).~~]

(iii) on and after January 1, 2018, an amount equal to 1.25% of the total workers' compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The [~~tax~~] commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, [~~2011~~] 2017, an amount of up to 3% of the total workers' compensation premium income; and

[~~(D) on and after January 1, 2012, but on or before December 31, 2012, an amount of up to 1% of the premium income; and~~]

[~~(E) on and after January 1, 2013, and a subsequent fiscal year, no portion of the premium income;~~]

(D) on and after January 1, 2018, 0% of the total workers' compensation premium income;

(ii) an amount equal to 0.25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to 0.5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, 0.5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be $5,000,000 which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be $2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) An admitted insurer writing title insurance in this state shall pay to the commission, on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

(a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and

(b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance producer, or any of them.

(4) Beginning July 1, 1986, a former county mutual and a former mutual benefit association shall pay the premium tax or assessment due under this chapter. Premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) an insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) an insurer licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) an insurer licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) an insurer licensed under Title 31A, Chapter 9, Insurance Fraternals;

(e) an insurer licensed under Title 31A, Chapter 11, Motor Clubs;

(f) an insurer licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and

(g) an insurer licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.

(7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and Taxes, apply to the tax or assessment imposed under this chapter.

CHAPTER 267
H. B. 217
Passed February 24, 2011
Approved March 23, 2011
Effective May 10, 2011

APPOINTMENT OF DIRECTOR OF THE DIVISION OF HEALTH CARE FINANCING

Chief Sponsor: David Clark
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends the Medical Assistance Act to provide that the director of the Division of Health Care Financing shall be appointed by the governor, after consultation with the executive director of the Department of Health, with the advice and consent of the Senate.

Highlighted Provisions:

This bill:

- provides that the director of the Division of Health Care Financing shall be appointed by the governor, after consultation with the executive director of the Department of Health, with the advice and consent of the Senate; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-2.2, as enacted by Laws of Utah 1988, Chapter 21

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

Section 1. Section 26-18-2.2 is amended to read:

26-18-2.2. Director -- Appointment -- Responsibilities.

The director of the division shall be appointed by the [~~executive director of the department~~] governor, after consultation with the executive director, with the advice and consent of the Senate. The director of the division may employ other employees as necessary to implement the provisions of this chapter, and shall:

(1) administer the responsibilities of the division as set forth in this chapter;

(2) prepare and administer the division's budget; and

(3) establish and maintain a state plan for the Medicaid program in compliance with federal law and regulations.

CHAPTER 268
H. B. 221
Passed March 3, 2011
Approved March 23, 2011
Effective July 1, 2011

CLASSIC CAR INSPECTIONS

Chief Sponsor: Fred C. Cox
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code by amending provisions relating to a vintage vehicle.

Highlighted Provisions:

This bill:

- amends the definition of a vintage vehicle;
- provides that at the time application is made for registration or renewal of registration of a vintage vehicle that is less than 40 years old, a registration fee of $45 shall be paid;
- provides for the disposition of the registration fee of a vintage vehicle that is less than 40 years old; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

41-1a-1201, as last amended by Laws of Utah 2010, Chapters 295 and 391
41-1a-1206, as last amended by Laws of Utah 2009, Chapter 241
41-21-1, as last amended by Laws of Utah 2009, Chapter 171

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

Section 1. Section 41-1a-1201 is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) Except as provided in Subsections (3), (5), and (6) and Sections 41-1a-422, 41-1a-1220, 41-1a-1221, and 41-1a-1223 all fees collected under this part shall be deposited in the Transportation Fund.

(3) (a) Funds generated under Subsections 41-1a-1211(1)(b)(i), (6)(b)(i), and (7) and Section 41-1a-1212 may be used by the commission as a dedicated credit to cover the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

(b) Fees for statehood centennial license plates shall be collected and deposited in the Transportation Fund, less production and administrative costs incurred by the commission.

(4) Except as provided in Subsection (3) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

(5) (a) Except as provided in Subsection (5)(b), the following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Centennial Highway Fund Restricted Account created under Section 72-2-118:

(i) $10 of the registration fees imposed under Subsections 41-1a-1206(1)(a), (1)(b), (1)(f), (2), and (5);

(ii) $1 of the registration fees imposed under Subsections 41-1a-1206(1)(c)(i), (1)(c)(ii), and (1)(d)(ii);

(iii) $2 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(ii);

(iv) $3 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(i); and

(v) $4.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(i).

(b) When the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the portions of the registration fees deposited under Subsection (5)(a) for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124.

(6) The following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124:

(a) $20 of each registration fee collected under Subsections 41-1a-1206(1)(a), (1)(b), (1)(c), (1)(d)(i), (1)(e)(i), (1)(f), (2)(a), and (5); and

(b) 50 cents of each registration fee collected under Subsection 41-1a-1206(1)(e)(ii).

Section 2. Section 41-1a-1206 is amended to read:

41-1a-1206. Registration fees -- Fees by gross laden weight.

(1) Except as provided in Subsection (2), at the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) $42.50 for each motorcycle;

(b) $41 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) $31 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) $28.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) $53 for each farm truck over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) $9 for each 2,000 pounds over 14,000 pounds gross laden weight; [~~and~~]

(e) (i) $69.50 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) $19 for each 2,000 pounds over 14,000 pounds gross laden weight; and

(f) $45 for each vintage vehicle that is less than 40 years old.

(2) (a) The initial registration fee for a vintage vehicle that is 40 years old or older is $40.

(b) A vintage vehicle that is 40 years old or older is exempt from the renewal of registration fees under Subsection (1).

(c) A vehicle with a Purple Heart special group license plate issued in accordance with Section 41-1a-421 is exempt from the registration fees under Subsection (1).

(3) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight of the combination exceeds 12,000 pounds.

(4) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

(5) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of $130.

(6) Except as provided in Section 41-6a-1642, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b) (i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division a certificate of emissions inspection or a waiver in compliance with Section 41-6a-1642.

(7) A violation of Subsection (6) is a class B misdemeanor that shall be punished by a fine of not less than $200.

(8) Trucks used exclusively to pump cement, bore wells, or perform crane services with a crane lift capacity of five or more tons, are exempt from 50% of the amount of the fees required for those vehicles under this section.

Section 3. Section 41-21-1 is amended to read:

41-21-1. Street rod and vintage vehicle defined.

(1) (a) "Street rod" means a motor vehicle that:

(i) (A) was manufactured in 1948 or before; or

(B) (I) was manufactured after 1948 to resemble a vehicle that was manufactured in 1948 or before; and

(II) (Aa) has been altered from the manufacturer's original design; or

(Bb) has a body constructed from non-original materials; and

(ii) is primarily a collector's item that is used for:

(A) club activities;

(B) exhibitions;

(C) tours;

(D) parades;

(E) occasional transportation; and

(F) other similar uses.

(b) [~~A~~] "Street rod" does not include a motor vehicle that is used for general, daily transportation.

(2) (a) "Vintage vehicle" means a motor vehicle that is [~~40~~] 30 years old or older, from the current year, primarily a collector's item, and used for participation in club activities, exhibitions, tours, parades, occasional transportation, and similar uses, but that is not used for general daily transportation.

(b) "Vintage vehicle" includes a street rod.

Section 4. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 269
H. B. 228
Passed March 10, 2011
Approved March 23, 2011
Effective May 1, 2011

ADMINISTRATIVE RULES REAUTHORIZATION

Chief Sponsor: Curtis Oda
Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill provides legislative action regarding administrative rules.

Highlighted Provisions:

This bill:

- reauthorizes all state agency administrative rules except a Division of Environmental Response and Remediation rule governing work performed by licensed engineers and geologists, and a Division of Environmental Response and Remediation rule governing third party consultant requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 1, 2011.

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Rules reauthorized.

All rules of Utah state agencies are reauthorized except for the following:

(1) R311-201-11, Environmental Quality, Environmental Response and Remediation, Underground Storage Tanks: Certification Programs and UST Operator Training, Work Performed by Licensed Engineers or Geologists; and

(2) R311-207-9, Environmental Quality, Environmental Response and Remediation, Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks, Third Party Consultant.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect May 1, 2011.

CHAPTER 270
H. B. 235
Passed February 18, 2011
Approved March 23, 2011
Effective May 10, 2011

TECHNOLOGY
TECHNICAL AMENDMENTS

Chief Sponsor: Patrice M. Arent
Senate Sponsor: Benjamin M. McAdams

LONG TITLE

General Description:

This bill amends certain reporting requirements and deletes references to the Utah Information Technology Commission.

Highlighted Provisions:

This bill:

- eliminates the submission of model rules or standards and technology transfer reports;
- modifies the reporting requirements to include the Public Utilities and Technology Interim Committee; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

46-4-501, as last amended by Laws of Utah 2008, Chapter 382
63A-9-801, as last amended by Laws of Utah 2008, Chapters 3 and 382
63B-3-301, as last amended by Laws of Utah 2008, Chapter 382
63F-1-102, as enacted by Laws of Utah 2005, Chapter 169
63F-1-104, as enacted by Laws of Utah 2005, Chapter 169
63F-1-201, as last amended by Laws of Utah 2007, Chapter 117
63F-1-203, as enacted by Laws of Utah 2005, Chapter 169
63F-1-404, as enacted by Laws of Utah 2005, Chapter 169
63F-1-504, as enacted by Laws of Utah 2005, Chapter 169
63F-1-604, as enacted by Laws of Utah 2005, Chapter 169

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

Section 1. Section 46-4-501 is amended to read:

46-4-501. Creation and retention of electronic records and conversion of written records by governmental agencies.

(1) A state governmental agency may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

(a) identify specific transactions that the agency is willing to conduct by electronic means;

(b) identify specific transactions that the agency will never conduct by electronic means;

(c) specify the manner and format in which electronic records must be created, generated, sent, communicated, received, and stored, and the systems established for those purposes;

(d) if law or rule requires that the electronic records must be signed by electronic means, specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met, by any third party used by a person filing a document to facilitate the process;

(e) specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(f) identify any other required attributes for electronic records that are specified for corresponding nonelectronic records or that are reasonably necessary under the circumstances.

(2) A state governmental agency that makes rules under this section shall submit copies of those rules, and any amendments to those rules, to[~~: (a)~~] the chief information officer established by Section 63F-1-201[~~; and~~].

[~~(b) the Utah Technology Commission established by Section 63D-1a-201.~~]

(3) (a) The chief information officer may prepare model rules and standards relating to electronic transactions that encourage and promote consistency and interoperability with similar requirements adopted by other Utah government agencies, other states, the federal government, and nongovernmental persons interacting with Utah governmental agencies.

(b) In preparing those model rules and standards, the chief information officer may specify different levels of standards from which governmental agencies may choose in order to implement the most appropriate standard for a particular application.

[~~(c) Before submitting any model rules or standards to state governmental agencies for their adoption as permanent rules, the chief information officer shall submit the model rules and standards to the Utah Technology Commission for its review and suggestions.~~]

[~~(d)~~] (c) Nothing in this Subsection (3) requires a state agency to use the model rules and standards prepared by the chief information officer when making rules under this section.

(4) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires any state governmental agency to:

(a) conduct transactions by electronic means; or

(b) use or permit the use of electronic records or electronic signatures.

(5) Each state governmental agency shall:

(a) establish record retention schedules for any electronic records created or received in an electronic transaction according to the standards developed by the Division of Archives under Subsection 63A-12-101(2)(e); and

(b) obtain approval of those schedules from the State Records Committee as required by Subsection 63G-2-502(1)(b).

Section 2. Section 63A-9-801 is amended to read:

63A-9-801. State surplus property program -- Definitions -- Administration.

(1) As used in this section:

(a) "Agency" means:

(i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage Control, Commerce, Community and Culture, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, Technology Services, and Transportation and the Labor Commission;

(ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime Victim Reparations, Rehabilitation, and Treasurer;

(iii) the Public Service Commission and State Tax Commission;

(iv) the State Boards of Education, Pardons and Parole, and Regents;

(v) the Career Service Review Board;

(vi) other state agencies designated by the governor;

(vii) the legislative branch, the judicial branch, and the State Board of Regents; and

(viii) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-9-802.

(b) "Division" means the Division of Fleet Operations.

(c) "Information technology equipment" means any equipment that is designed to electronically manipulate, store, or transfer any form of data.

(d) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(e) "Judicial district" means the geographic districts established by Section 78A-1-102.

(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.

(ii) "Surplus property" does not mean real property.

(g) "Transfer" means transfer of surplus property without cash consideration.

(2) (a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Those rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling;

(viii) procedures governing the timing and location of public sales of inventory property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) The division shall report all transfers of information technology equipment by state agencies to public schools [~~to the Utah Technology Commission and~~] to the Legislative Interim Education Committee at the end of each fiscal year.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(c) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less an amount established by the division by rule to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this chapter by explicit reference to this chapter, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 3. Section 63B-3-301 is amended to read:

63B-3-301. Legislative intent -- Additional projects.

(1) It is the intent of the Legislature that, for any lease purchase agreement that the Legislature may authorize the Division of Facilities Construction and Management to enter into during its 1994 Annual General Session, the State Building Ownership Authority, at the reasonable rates and amounts it may determine, and with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget, may seek out the most cost effective and prudent lease purchase plans available to the state and may, pursuant to Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, certificate out interests in, or obligations of the authority pertaining to:

(a) the lease purchase obligation; or

(b) lease rental payments under the lease purchase obligation.

(2) It is the intent of the Legislature that the Department of Transportation dispose of surplus real properties and use the proceeds from those properties to acquire or construct through the Division of Facilities Construction and Management a new District Two Complex.

(3) It is the intent of the Legislature that the State Building Board allocate funds from the Capital Improvement appropriation and donations to cover costs associated with the upgrade of the Governor's Residence that go beyond the restoration costs which can be covered by insurance proceeds.

(4) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $10,600,000 for the construction of a Natural Resources Building in Salt Lake City, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget.

(c) It is the intent of the Legislature that the operating budget for the Department of Natural Resources not be increased to fund these lease payments.

(5) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $8,300,000 for the acquisition of the office buildings currently occupied by the Department of Environmental Quality and approximately 19 acres of additional vacant land at the Airport East Business Park in Salt Lake City, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget.

(6) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $9,000,000 for the acquisition or construction of up to two field offices for the Department of Human Services in the southwestern portion of Salt Lake County, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget.

(7) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or enter into or arrange for lease purchase agreements in which participation interests may be created, to provide up to $5,000,000 for the acquisition or construction of up to 13 stores for the Department of Alcoholic Beverage Control, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget.

(c) It is the intent of the Legislature that the operating budget for the Department of Alcoholic Beverage Control not be increased to fund these lease payments.

(8) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $6,800,000 for the construction of a Prerelease and Parole Center for the Department of Corrections, containing a minimum of 300 beds, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Governor's Office of Planning and Budget.

(9) If S.B. 275, 1994 General Session, which authorizes funding for a Courts Complex in Salt Lake City, becomes law, it is the intent of the Legislature that:

(a) the Legislative Management Committee, the Interim Appropriation Subcommittees for General Government and Capital Facilities and Executive Offices, Courts, and Corrections, the Office of the Legislative Fiscal Analyst, the Governor's Office of Planning and Budget, and the State Building Board participate in a review of the proposed facility design for the Courts Complex no later than December 1994; and

(b) although this review will not affect the funding authorization issued by the 1994 Legislature, it is expected that Division of Facilities Construction and Management will give proper attention to concerns raised in these reviews and make appropriate design changes pursuant to the review.

(10) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management, in cooperation with the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services, develop a flexible use prototype facility for the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services;

(b) the development process use existing prototype proposals unless it can be quantifiably demonstrated that the proposals cannot be used;

(c) the facility is designed so that with minor modifications, it can accommodate detention, observation and assessment, transition, and secure programs as needed at specific geographical locations;

(d) (i) funding as provided in the fiscal year 1995 bond authorization for the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services is used to design and construct one facility and design the other;

(ii) the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services shall:

(A) determine the location for the facility for which design and construction are fully funded; and

(B) in conjunction with the Division of Facilities Construction and Management, determine the best methodology for design and construction of the fully funded facility;

(e) the Division of Facilities Construction and Management submit the prototype as soon as possible to the Capital Facilities and Administrative Services Appropriation Subcommittee and Executive Offices, Criminal Justice, and Legislature Appropriation Subcommittee for review;

(f) the Division of Facilities Construction and Management issue a Request for Proposal for one of the facilities, with that facility designed and constructed entirely by the winning firm;

(g) the other facility be designed and constructed under the existing Division of Facilities Construction and Management process;

(h) that both facilities follow the program needs and specifications as identified by Division of Facilities Construction and Management and the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services in the prototype; and

(i) the fully funded facility should be ready for occupancy by September 1, 1995.

(11) It is the intent of the Legislature that the fiscal year 1995 funding for the State Fair Park Master Study be used by the Division of Facilities Construction and Management to develop a master plan for the State Fair Park that:

(a) identifies capital facilities needs, capital improvement needs, building configuration, and other long term needs and uses of the State Fair Park and its buildings; and

(b) establishes priorities for development, estimated costs, and projected timetables.

(12) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management, in cooperation with the Division of Parks and Recreation and surrounding counties, develop a master plan and general program for the phased development of Antelope Island;

(b) the master plan:

(i) establish priorities for development;

(ii) include estimated costs and projected time tables; and

(iii) include recommendations for funding methods and the allocation of responsibilities between the parties; and

(c) the results of the effort be reported to the Natural Resources Appropriations Subcommittee and Capital Facilities and Administrative Services Appropriation Subcommittee.

(13) It is the intent of the Legislature to authorize the University of Utah to use:

(a) bond reserves to plan, design, and construct the Kingsbury Hall renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) donated and other nonappropriated funds to plan, design, and construct the Biology Research Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(14) It is the intent of the Legislature to authorize Utah State University to use:

(a) federal and other funds to plan, design, and construct the Bee Lab under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) donated and other nonappropriated funds to plan, design, and construct an Athletic Facility addition and renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(c) donated and other nonappropriated funds to plan, design, and construct a renovation to the Nutrition and Food Science Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(d) federal and private funds to plan, design, and construct the Millville Research Facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(15) It is the intent of the Legislature to authorize Salt Lake Community College to use:

(a) institutional funds to plan, design, and construct a remodel to the Auto Trades Office and Learning Center under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) institutional funds to plan, design, and construct the relocation and expansion of a temporary maintenance compound under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(c) institutional funds to plan, design, and construct the Alder Amphitheater under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(16) It is the intent of the Legislature to authorize Southern Utah University to use:

(a) federal funds to plan, design, and construct a Community Services Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) donated and other nonappropriated funds to plan, design, and construct a stadium expansion under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(17) It is the intent of the Legislature to authorize the Department of Corrections to use donated funds to plan, design, and construct a Prison Chapel at the Central Utah Correctional Facility in Gunnison under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(18) If the Utah National Guard does not relocate in the Signetics Building, it is the intent of the Legislature to authorize the Guard to use federal funds and funds from Provo City to plan and design an Armory in Provo, Utah, under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(19) It is the intent of the Legislature that the Utah Department of Transportation use $250,000 of the fiscal year 1995 highway appropriation to fund an environmental study in Ogden, Utah of the 2600 North Corridor between Washington Boulevard and I-15.

(20) It is the intent of the Legislature that the Ogden-Weber Applied Technology Center use the money appropriated for fiscal year 1995 to design the Metal Trades Building and purchase equipment for use in that building that could be used in metal trades or other programs in other Applied Technology Centers.

(21) It is the intent of the Legislature that the Bridgerland Applied Technology Center and the Ogden-Weber Applied Technology Center projects as designed in fiscal year 1995 be considered as the highest priority projects for construction funding in fiscal year 1996.

(22) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management complete physical space utilization standards by June 30, 1995, for the use of technology education activities;

(b) these standards are to be developed with and approved by the State Office of Education, the Board of Regents, and the Utah State Building Board;

(c) these physical standards be used as the basis for:

(i) determining utilization of any technology space based on number of stations capable and occupied for any given hour of operation; and

(ii) requests for any new space or remodeling;

(d) the fiscal year 1995 projects at the Bridgerland Applied Technology Center and the Ogden-Weber Applied Technology Center are exempt from this process; and

(e) the design of the Davis Applied Technology Center take into account the utilization formulas established by the Division of Facilities Construction and Management.

(23) It is the intent of the Legislature that Utah Valley State College may use the money from the bond allocated to the remodel of the Signetics building to relocate its technical education programs at other designated sites or facilities under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(24) It is the intent of the Legislature that the money provided for the fiscal year 1995 project for the Bridgerland Applied Technology Center be used to design and construct the space associated with Utah State University and design the technology center portion of the project.

(25) It is the intent of the Legislature that the governor provide periodic reports on the expenditure of the funds provided for electronic technology, equipment, and hardware to the [~~Information Technology Commission~~] Public Utilities and Technology Interim Committee, the Capital Facilities and Administrative Services Appropriation Subcommittee, and the Legislative Management Committee.

Section 4. Section 63F-1-102 is amended to read:

63F-1-102. Definitions.

As used in this title:

(1) "Board" means the Technology Advisory Board created in Section 63F-1-202.

(2) "Chief information officer" means the chief information officer appointed under Section 63F-1-201.

[~~(3) "Commission" means the Utah Technology Commission created in Section 63D-1a-201.~~]

[~~(4)~~] (3) "Computer center" means the location at which a central data processing platform is managed to serve multiple executive branch agencies.

[~~(5)~~] (4) "Data center" means a centralized repository for the storage, management, and dissemination of data.

[~~(6)~~] (5) "Department" means the Department of Technology Services.

[~~(7)~~] (6) (a) Except as provided in Subsection [~~(7)~~] (6)(b), "executive branch agency" means an agency or administrative subunit of state government.

(b) "Executive branch agency" does not include:

(i) the legislative branch;

(ii) the judicial branch;

(iii) the State Board of Education;

(iv) the Board of Regents;

(v) institutions of higher education;

(vi) independent entities as defined in Section 63E-1-102; and

(vii) elective constitutional offices of the executive department which includes:

(A) the state auditor;

(B) the state treasurer; and

(C) the attorney general.

[~~(8)~~] (7) "Executive branch strategic plan" means the executive branch strategic plan created under Section 63F-1-203.

[~~(9)~~] (8) "Information technology" means all computerized and auxiliary automated information handling, including:

(a) systems design and analysis;

(b) acquisition, storage, and conversion of data;

(c) computer programming;

(d) information storage and retrieval;

(e) voice, radio, video, and data communications;

(f) requisite systems controls;

(g) simulation; and

(h) all related interactions between people and machines.

[~~(10)~~] (9) "State information architecture" means a logically consistent set of principles, policies, and standards that guide the engineering of state government's information technology and infrastructure in a way that ensures alignment with state government's business and service needs.

[~~(11)~~] (10) "Telecommunications" means the transmission or reception of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means.

Section 5. Section 63F-1-104 is amended to read:

63F-1-104. Purposes.

The department shall:

(1) lead state executive branch agency efforts to reengineer the state's information technology architecture with the goal of coordinating central and individual agency information technology in a manner that:

(a) ensures compliance with the executive branch agency strategic plan; and

(b) ensures that cost-effective, efficient information and communication systems and resources are being used by agencies to:

(i) reduce data, hardware, and software redundancy;

(ii) improve system interoperability and data accessibility between agencies; and

(iii) meet the agency's and user's business and service needs;

(2) (a) coordinate an executive branch strategic plan for all agencies;

(b) identify best practices from agencies and other public and private sector entities; and

(c) develop and implement processes to replicate information technology best practices and standards throughout the executive branch;

(3) oversee the expanded use and implementation of project and contract management principles as they relate to information technology projects within the executive branch;

(4) serve as general contractor between the state's information technology users and private sector providers of information technology products and services;

(5) work toward building stronger partnering relationships with providers;

(6) develop service level agreements with executive branch departments and agencies to ensure quality products and services are delivered on schedule and within budget;

(7) develop standards for application development including a standard methodology and cost-benefit analysis that all agencies shall utilize for application development activities;

(8) determine and implement statewide efforts to standardize data elements and determine data ownership assignments among executive branch agencies;

(9) develop systems and methodologies to review, evaluate, and prioritize existing information technology projects within the executive branch and report to the governor and the [~~commission~~] Public Utilities and Technology Interim Committee on a semiannual basis regarding the status of information technology projects; and

(10) assist the Governor's Office of Planning and Budget with the development of information technology budgets for agencies.

Section 6. Section 63F-1-201 is amended to read:

63F-1-201. Chief information officer -- Appointment -- Powers -- Reporting.

(1) The director of the department shall serve as the state's chief information officer.

(2) The chief information officer shall:

(a) advise the governor on information technology policy; and

(b) perform those duties given the chief information officer by statute.

(3) (a) The chief information officer shall report annually to:

(i) the governor; and

[~~(ii) the commission; and~~]

[~~(iii)~~] (ii) the Public Utilities and Technology Interim Committee.

(b) The report required under Subsection (3)(a) shall:

(i) summarize the state's current and projected use of information technology;

(ii) summarize the executive branch strategic plan including a description of major changes in the executive branch strategic plan; and

(iii) provide a brief description of each state agency's information technology plan.

(4) (a) In accordance with this section, the chief information officer shall prepare an interbranch information technology coordination plan that provides for the coordination where possible of the development, acquisition, and maintenance of information technology and information systems of:

(i) the executive branch;

(ii) the judicial branch;

(iii) the legislative branch;

(iv) the Board of Regents; and

(v) the State Board of Education.

(b) In the development of the interbranch coordination plan, the chief information officer shall consult with the entities described in Subsection (4)(a).

(c) The interbranch coordination plan:

(i) is an advisory document; and

(ii) does not bind any entity described in Subsection (4)(a).

(d) (i) The chief information officer shall submit the interbranch coordination plan to the Public Utilities and Technology Interim Committee for comment.

(ii) The chief information officer may modify the interbranch coordination plan:

(A) at the request of the Public Utilities and Technology Interim Committee; or

(B) to improve the coordination between the entities described in Subsection (4)(a).

(iii) Any amendment to the interbranch coordination plan is subject to this Subsection (4) in the same manner as the interbranch coordination plan is subject to this Subsection (4).

(5) In a manner consistent with the interbranch coordination plan created in accordance with Subsection (4), the chief information officer shall maintain liaisons with:

(a) the judicial branch;

(b) the legislative branch;

(c) the Board of Regents;

(d) the State Board of Education;

(e) local government;

(f) the federal government;

(g) business and industry; and

(h) those members of the public who use information technology or systems of the state.

Section 7. Section 63F-1-203 is amended to read:

63F-1-203. Executive branch information technology strategic plan.

(1) In accordance with this section, the chief information officer shall prepare an executive branch information technology strategic plan:

(a) that complies with this chapter; and

(b) which shall include:

(i) a strategic plan for the:

(A) interchange of information related to information technology between executive branch agencies;

(B) coordination between executive branch agencies in the development and maintenance of information technology and information systems, including the coordination of agency information technology plans described in Section 63F-1-204; and

(C) protection of the privacy of individuals who use state information technology or information systems;

(ii) priorities for the development and implementation of information technology or information systems including priorities determined on the basis of:

(A) the importance of the information technology or information system; and

(B) the time sequencing of the information technology or information system; and

(iii) maximizing the use of existing state information technology resources.

(2) In the development of the executive branch strategic plan, the chief information officer shall consult with all cabinet level officials and the advisory board created in Section 63F-1-202.

(3) (a) Unless withdrawn by the chief information officer or the governor in accordance with Subsection (3)(b), the executive branch strategic plan takes effect 30 days after the day on which the executive branch strategic plan is submitted to:

(i) the governor; and

(ii) the [~~commission~~] Public Utilities and Technology Interim Committee.

(b) The chief information officer or the governor may withdraw the executive branch strategic plan submitted under Subsection (3)(a) if the governor or chief information officer determines that the executive branch strategic plan:

(i) should be modified; or

(ii) for any other reason should not take effect.

(c) The [~~commission~~] Public Utilities and Technology Interim Committee may make recommendations to the governor and to the chief information officer if the commission determines that the executive branch strategic plan should be modified or for any other reason should not take effect.

(d) Modifications adopted by the chief information officer shall be resubmitted to the governor and the [~~commission~~] Public Utilities and Technology Interim Committee for their review or approval as provided in Subsections (3)(a) and (b).

(4) The executive branch strategic plan is to be implemented by executive branch agencies through each executive branch agency adopting an agency information technology plan in accordance with Section 63F-1-204.

Section 8. Section 63F-1-404 is amended to read:

63F-1-404. Duties of the division.

The division shall:

(1) develop and implement an effective enterprise architecture governance model for the executive branch;

(2) provide oversight of information technology projects that impact statewide information technology services, assets, or functions of state government to:

(a) control costs;

(b) ensure business value to a project;

(c) maximize resources;

(d) ensure the uniform application of best practices; and

(e) avoid duplication of resources;

(3) develop a method of accountability to agencies for services provided by the division through service agreements with the agencies;

(4) beginning September 1, 2006, and each September 1 thereafter, provide the chief information officer and the [~~commission~~] Public Utilities and Technology Interim Committee with performance measures used by the division to measure the quality of service delivered by the division and the results of the performance measures;

(5) serve as a project manager for enterprise architecture which includes the management of applications, standards, and procurement of enterprise architecture;

(6) coordinate the development and implementation of advanced state telecommunication systems;

(7) provide services including technical assistance:

(a) to executive branch agencies and subscribers to the services; and

(b) related to information technology or telecommunications;

(8) establish telecommunication system specifications and standards for use by:

(a) one or more executive branch agencies; or

(b) one or more entities that subscribe to the telecommunication systems in accordance with Section 63F-1-303;

(9) coordinate state telecommunication planning in cooperation with:

(a) state telecommunication users;

(b) executive branch agencies; and

(c) other subscribers to the state's telecommunication systems;

(10) cooperate with the federal government, other state entities, counties, and municipalities in the development, implementation, and maintenance of:

(a) (i) governmental information technology; or

(ii) governmental telecommunication systems; and

(b) (i) as part of a cooperative organization; or

(ii) through means other than a cooperative organization;

(11) establish, operate, manage, and maintain:

(a) one or more state data centers; and

(b) one or more regional computer centers;

(12) design, implement, and manage all state-owned, leased, or rented land, mobile, or radio telecommunication systems that are used in the delivery of services for state government or its political subdivisions;

(13) in accordance with the executive branch strategic plan, implement minimum standards to be used by the division for purposes of compatibility of procedures, programming languages, codes, and media that facilitate the exchange of information within and among telecommunication systems; and

(14) provide the chief information officer with an analysis of an executive branch agency information technology plan that includes:

(a) an assessment of how the implementation of the agency information technology plan will affect the costs, operations, and services of:

(i) the department; and

(ii) other executive branch agencies; and

(b) any recommended changes to the plan.

Section 9. Section 63F-1-504 is amended to read:

63F-1-504. Duties of the division.

The division shall:

(1) establish standards for the information technology needs of a collection of executive branch agencies or programs that share common characteristics relative to the types of stakeholders they serve, including:

(a) project management;

(b) application development; and

(c) procurement;

(2) provide oversight of information technology standards that impact multiple executive branch agency information technology services, assets, or functions to:

(a) control costs;

(b) ensure business value to a project;

(c) maximize resources;

(d) ensure the uniform application of best practices; and

(e) avoid duplication of resources;

(3) in accordance with Section 63F-1-204, provide the chief information officer a written analysis of any agency information technology plan provided to the division, which shall include:

(a) a review of whether the agency's technology projects impact multiple agencies and if so, whether the information technology projects are appropriately designed and developed;

(b) an assessment of whether the agency plan complies with the state information architecture; and

(c) an assessment of whether the information technology projects included in the agency plan comply with policies, procedures, and rules adopted by the department to ensure that:

(i) information technology projects are phased in;

(ii) funding is released in phases;

(iii) an agency's authority to proceed to the next phase of an information technology project is contingent upon the successful completion of the prior phase; and

(iv) one or more specific deliverables is identified for each phase of a technology project;

(4) establish a system of accountability to user agencies through the use of service agreements;

(5) each year, provide the chief information officer and the [~~commission~~] Public Utilities and Technology Interim Committee with performance measures used by the division to measure the quality of services delivered by the division and results of those measures; and

(6) establish administrative rules in accordance with Section 63F-1-206 and as required by Section 63F-1-506.

Section 10. Section 63F-1-604 is amended to read:

63F-1-604. Duties of the division.

The division shall:

(1) be responsible for providing support to executive branch agencies for an agency's information technology assets and functions that are unique to the executive branch agency and are mission critical functions of the agency;

(2) conduct audits of an executive branch agency when requested under the provisions of Section 63F-1-208;

(3) conduct cost-benefit analysis of delegating a department function to an agency in accordance with Section 63F-1-208;

(4) provide in-house information technology staff support to executive branch agencies;

(5) establish accountability and performance measures for the division to assure that the division is meeting the business and service needs of the state and individual executive branch agencies;

(6) establish a committee composed of agency user groups for the purpose of coordinating department services with agency needs;

(7) assist executive branch agencies in complying with the requirements of any rule adopted by the chief information officer; and

(8) by July 1, 2006 and each July 1 thereafter, report to the [~~commission~~] Public Utilities and Technology Interim Committee on the performance measures used by the division under Subsection (5) and the results.

CHAPTER 271
H. B. 250
Passed March 7, 2011
Approved March 23, 2011
Effective May 10, 2011

STATE EMBLEM OF SERVICE AND SACRIFICE

Chief Sponsor: Merlynn T. Newbold
Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill modifies the state symbols and designations to include the "Honor and Remember" flag.

Highlighted Provisions:

This bill:

- designates the "Honor and Remember" flag as the state's emblem of service and sacrifice as a visible reminder of the lives lost by members of the United States Armed Forces in defense of our national freedoms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-1-601, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63G-1-601 is amended to read:

63G-1-601. State symbols.

(1) Utah's state animal is the elk.

(2) Utah's state bird is the sea gull.

(3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.

(4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.

(5) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.

(6) Utah's state cooking pot is the dutch oven.

(7) Utah's state emblem is the beehive.

(8) Utah's state emblem of service and sacrifice of lives lost by members of the military in defense of our freedom is the "Honor and Remember" flag, which consists of:

(a) a red field covering the top two-thirds of the flag;

(b) a white field covering the bottom one-third of the flag, which contains the words "honor" and "remember";

(c) a blue star overlaid by a gold star with a thin white border in the center of the flag spanning the red field and the white field; and

(d) a representation of a folded United States flag beneath the blue and gold stars with three tongues of flame emanating from its top point into the center of the gold star.

[~~(8)~~] (9) Utah's state fish is the Bonneville cutthroat trout.

[~~(9)~~] (10) Utah's state flower is the sego lily.

[~~(10)~~] (11) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.

[~~(11)~~] (12) Utah's state fossil is the Allosaurus.

[~~(12)~~] (13) Utah's state fruit is the cherry.

[~~(13)~~] (14) Utah's state vegetable is the Spanish sweet onion.

[~~(14)~~] (15) Utah's historic state vegetable is the sugar beet.

[~~(15)~~] (16) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

[~~(16)~~] (17) Utah's state grass is Indian rice grass.

[~~(17)~~] (18) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.

[~~(18)~~] (19) Utah's state insect is the honeybee.

[~~(19)~~] (20) Utah's state mineral is copper.

[~~(20)~~] (21) Utah's state motto is "Industry."

[~~(21)~~] (22) Utah's state railroad museum is Ogden Union Station.

[~~(22)~~] (23) Utah's state rock is coal.

[~~(23)~~] (24) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.

[~~(24)~~] (25) Utah's state tree is the blue spruce.

CHAPTER 272
H. B. 271
Passed March 2, 2011
Approved March 23, 2011
Effective May 10, 2011

RESTRICTIONS ON POLITICAL SUBDIVISIONS REGARDING THE REGULATION OF KNIVES

Chief Sponsor: Ryan D. Wilcox
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill prohibits a municipality, a county, and a local district from regulating the use of a knife unless specifically authorized.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits a municipality, a county, and a local district from regulating the use of a knife unless specifically authorized; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-103, as last amended by Laws of Utah 2010, Chapter 150

ENACTS:

10-8-47.5, Utah Code Annotated 1953
17-50-332, Utah Code Annotated 1953

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

Section 1. Section 10-8-47.5 is enacted to read:

10-8-47.5. Knives regulated by state.

(1) As used in this section, "knife" means a cutting instrument that includes a sharpened or pointed blade.

(2) The authority to regulate a knife is reserved to the state except where the Legislature specifically delegates responsibility to a municipality.

(3) (a) Unless specifically authorized by the Legislature or, subject to Subsection (3)(b), a municipal ordinance with a criminal penalty, a municipality may not enact or enforce an ordinance or a regulation pertaining to a knife.

(b) A municipality may not enact an ordinance with a criminal penalty pertaining to a knife that is:

(i) more restrictive than a state criminal penalty pertaining to a knife; or

(ii) has a greater criminal penalty than a state penalty pertaining to a knife.

Section 2. Section 17-50-332 is enacted to read:

17-50-332. Knives regulated by state.

(1) As used in this section, "knife" means a cutting instrument that includes a sharpened or pointed blade.

(2) The authority to regulate a knife is reserved to the state except where the Legislature specifically delegates responsibility to a county.

(3) (a) Unless specifically authorized by the Legislature or, subject to Subsection (3)(b), a county ordinance with a criminal penalty, a county may not enact or enforce an ordinance or a regulation pertaining to a knife.

(b) A county may not enact an ordinance with a criminal penalty pertaining to a knife that is:

(i) more restrictive than a state criminal penalty pertaining to a knife; or

(ii) has a greater criminal penalty than a state penalty pertaining to a knife.

Section 3. Section 17B-1-103 is amended to read:

17B-1-103. Local district status and powers.

(1) A local district:

(a) is:

(i) a body corporate and politic with perpetual succession;

(ii) a quasi-municipal corporation; and

(iii) a political subdivision of the state; and

(b) may sue and be sued.

(2) A local district may:

(a) acquire, by any lawful means, or lease any real property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(b) acquire, by any lawful means, any interest in real property, personal property, or a groundwater right necessary or convenient to the full exercise of the district's powers;

(c) transfer an interest in or dispose of any property or interest described in Subsections (2)(a) and (b);

(d) acquire or construct works, facilities, and improvements necessary or convenient to the full exercise of the district's powers, and operate, control, maintain, and use those works, facilities, and improvements;

(e) borrow money and incur indebtedness for any lawful district purpose;

(f) issue bonds, including refunding bonds:

(i) for any lawful district purpose; and

(ii) as provided in and subject to Part 11, Local District Bonds;

(g) levy and collect property taxes:

(i) for any lawful district purpose or expenditure, including to cover a deficit resulting from tax delinquencies in a preceding year; and

(ii) as provided in and subject to Part 10, Local District Property Tax Levy;

(h) as provided in Title 78B, Chapter 6, Part 5, Eminent Domain, acquire by eminent domain property necessary to the exercise of the district's powers;

(i) invest money as provided in Title 51, Chapter 7, State Money Management Act;

(j) (i) impose fees or other charges for commodities, services, or facilities provided by the district, to pay some or all of the district's costs of providing the commodities, services, and facilities, including the costs of:

(A) maintaining and operating the district;

(B) acquiring, purchasing, constructing, improving, or enlarging district facilities;

(C) issuing bonds and paying debt service on district bonds; and

(D) providing a reserve established by the board of trustees; and

(ii) take action the board of trustees considers appropriate and adopt regulations to assure the collection of all fees and charges that the district imposes;

(k) if applicable, charge and collect a fee to pay for the cost of connecting a customer's property to district facilities in order for the district to provide service to the property;

(l) enter into a contract that the local district board of trustees considers necessary, convenient, or desirable to carry out the district's purposes, including a contract:

(i) with the United States or any department or agency of the United States;

(ii) to indemnify and save harmless; or

(iii) to do any act to exercise district powers;

(m) purchase supplies, equipment, and materials;

(n) encumber district property upon terms and conditions that the board of trustees considers appropriate;

(o) exercise other powers and perform other functions that are provided by law;

(p) construct and maintain works and establish and maintain facilities, including works or facilities:

(i) across or along any public street or highway, subject to Subsection (3) and if the district:

(A) promptly restores the street or highway, as much as practicable, to its former state of usefulness; and

(B) does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it;

(ii) in, upon, or over any vacant public lands that are or become the property of the state, including school and institutional trust lands, as defined in Section 53C-1-103, if the director of the School and Institutional Trust Lands Administration, acting under Sections 53C-1-102 and 53C-1-303, consents; or

(iii) across any stream of water or watercourse, subject to Section 73-3-29;

(q) perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes;

(r) (i) except for a local district described in Subsection (2)(r)(ii), designate an assessment area and levy an assessment on land within the assessment area, as provided in Title 11, Chapter 42, Assessment Area Act; or

(ii) for a local district in a critical management area described in Subsection 17B-1-202(1)(c), designate an assessment area and levy an assessment on a groundwater right to facilitate a groundwater management plan;

(s) contract with another political subdivision of the state to allow the other political subdivision to use the district's surplus water or capacity or have an ownership interest in the district's works or facilities, upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public; and

(t) upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the district's board of trustees considers to be in the best interests of the district and the public, agree:

(i) with:

(A) another political subdivision of the state; or

(B) a public or private owner of property:

(I) on which the district has a right-of-way; or

(II) adjacent to which the district owns fee title to property; and

(ii) to allow the use of property:

(A) owned by the district; or

(B) on which the district has a right-of-way.

(3) With respect to a local district's use of a street or highway, as provided in Subsection (2)(p)(i):

(a) the district shall comply with the reasonable rules and regulations of the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway, concerning:

(i) an excavation and the refilling of an excavation;

(ii) the relaying of pavement; and

(iii) the protection of the public during a construction period; and

(b) the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway:

(i) may not require the district to pay a license or permit fee or file a bond; and

(ii) may require the district to pay a reasonable inspection fee.

(4) (a) A local district may:

(i) acquire, lease, or construct and operate electrical generation, transmission, and distribution facilities, if:

(A) the purpose of the facilities is to harness energy that results inherently from the district's:

(I) operation of a project or facilities that the district is authorized to operate; or

(II) providing a service that the district is authorized to provide;

(B) the generation of electricity from the facilities is incidental to the primary operations of the district; and

(C) operation of the facilities will not hinder or interfere with the primary operations of the district;

(ii) (A) use electricity generated by the facilities; or

(B) subject to Subsection (4)(b), sell electricity generated by the facilities to an electric utility or municipality with an existing system for distributing electricity.

(b) A district may not act as a retail distributor or seller of electricity.

(c) Revenue that a district receives from the sale of electricity from electrical generation facilities it owns or operates under this section may be used for any lawful district purpose, including the payment of bonds issued to pay some or all of the cost of acquiring or constructing the facilities.

(5) A local district may adopt and, after adoption, alter a corporate seal.

(6) (a) As used in this Subsection (6), "knife" means a cutting instrument that includes a sharpened or pointed blade.

(b) The authority to regulate a knife is reserved to the state except where the Legislature specifically delegates responsibility to a local district.

(c) Unless specifically authorized by the Legislature by statute, a local district may not adopt or enforce a regulation or rule pertaining to a knife.

CHAPTER 273
H. B. 303
Passed March 10, 2011
Approved March 23, 2011
Effective July 1, 2011

PREPAID WIRELESS 911 SERVICE CHARGE

Chief Sponsor: Brad L. Dee
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill provides for the collection of a prepaid wireless 911 service charge from a prepaid wireless customer at the point of retail sale.

Highlighted Provisions:

This bill:

- defines terms;
- provides for the collection of a prepaid wireless 911 service charge from a prepaid wireless customer at the point of retail sale;
- describes the responsibilities of a seller to collect the charge from a customer and to remit the charge to the State Tax Commission;
- describes the responsibilities of the State Tax Commission in collecting and distributing money collected from the prepaid wireless 911 service charge;
- allows a seller and the State Tax Commission to each retain a portion of money collected from the charge for administration; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS:
69-2-5.7, Utah Code Annotated 1953

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

Section 1. Section 69-2-5.7 is enacted to read:

69-2-5.7. Prepaid wireless telecommunications charge to fund 911 service.

(1) As used in this section:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a transaction.

(b) "Prepaid wireless 911 service charge" means the charge that is required to be collected by a seller from a consumer in the amount established under Subsection (2).

(c) (i) "Prepaid wireless telecommunications service" means a wireless telecommunications service that:

(A) is paid for in advance;

(B) is sold in predetermined units of time or dollars that decline with use in a known amount or provides unlimited use of the service for a fixed amount or time; and

(C) allows a caller to dial 911 to access 911 emergency telephone service.

(ii) "Prepaid wireless telecommunications service" does not include a wireless telecommunications service that is billed:

(A) to a customer on a recurring basis; and

(B) in a manner that includes the emergency services telecommunications charges, described in Sections 69-2-5, 69-2-5.5, and 69-2-5.6, for each radio communication access line assigned to the customer.

(d) "Seller" means a person that sells prepaid wireless telecommunications service to a consumer.

(e) "Transaction" means each purchase of prepaid wireless telecommunications service from a seller.

(f) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. Sec. 20.3, as amended.

(2) There is imposed a prepaid wireless 911 service charge of 1.9% of the sales price per transaction.

(3) The prepaid wireless 911 service charge shall be collected by the seller from the consumer for each transaction occurring in this state.

(4) The prepaid wireless 911 service charge shall be separately stated on an invoice, receipt, or similar document that is provided by the seller to the consumer.

(5) For purposes of Subsection (3), the location of a transaction is determined in accordance with Sections 59-12-211 through 59-12-215.

(6) When prepaid wireless telecommunications service is sold with one or more other products or services for a single non-itemized price, then the percentage specified in Section (2) shall apply to the entire non-itemized price.

(7) A seller may retain 3% of prepaid wireless 911 service charges that are collected by the seller from consumers as reimbursement for the cost of billing, collecting, and remitting the charge.

(8) Prepaid wireless 911 service charges collected by a seller, except as retained under Subsection (7), shall be remitted to the State Tax Commission at the same time as the seller remits to the State Tax Commission money collected by the person under Title 59, Chapter 12, Sales and Use Tax Act.

(9) The State Tax Commission:

(a) shall collect, enforce, and administer the charge imposed under this section using the same procedures used in the administration, collection, and enforcement of the state sales and use taxes under:

(i) Title 59, Chapter 1, General Taxation Policies; and

(ii) Title 59, Chapter 12, Part 1, Tax Collection, except for:

(A) Section 59-12-104;

(B) Section 59-12-104.1;

(C) Section 59-12-104.2;

(D) Section 59-12-107.1; and

(E) Section 59-12-123;

(b) may retain up to 1.5% of the prepaid wireless 911 service charge revenue collected under Subsection (9)(a) as reimbursement for administering this section;

(c) shall distribute the prepaid wireless 911 service charge revenue, except as retained under Subsection (9)(b), as follows:

(i) 80.3% of the revenue shall be distributed to each county, city, or town in the same percentages and in the same manner as the entities receive money to fund 911 emergency telecommunications services under Section 69-2-5;

(ii) 9.2% of the revenue shall be distributed to fund the Poison Control Center as in Section 69-2-5.5; and

(iii) 10.5% of the revenue shall be distributed to fund the statewide unified E-911 emergency service as in Section 69-2-5.6; and

(d) may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer, collect, and enforce the charges imposed under this section.

Section 2. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 274
H. B. 314
Passed March 9, 2011
Approved March 23, 2011
Effective May 10, 2011

INSURANCE REQUIREMENTS FOR CHILD CARE BUSES

Chief Sponsor: Johnny Anderson
Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Motor Carrier Safety Act by amending provisions relating to minimum motor vehicle liability coverage for certain motor carriers.

Highlighted Provisions:

This bill:

- provides that the Department of Transportation shall not require a motor carrier to comply with certain federal minimum security requirements if the motor carrier meets certain specified criteria;
- provides minimum motor vehicle liability coverage requirements for certain motor carriers; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-9-103, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 72-9-103 is amended to read:

72-9-103. Rulemaking -- Motor vehicle liability coverage for certain motor carriers -- Adjudicative proceedings.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(a) adopting by reference in whole or in part the Federal Motor Carrier Safety Regulations including minimum security requirements for motor carriers;

(b) specifying the equipment required to be carried in each tow truck, including limits on loads that may be moved based on equipment capacity and load weight;

(c) specifying collection procedures, in conjunction with the administration and enforcement of the safety or security requirements, for the motor carrier fee under Section 72-9-706; and

(d) providing for the necessary administration and enforcement of this chapter.

(2) (a) Notwithstanding Subsection (1)(a), the department shall not require a motor carrier to comply with 49 C.F.R. Part 387 Subpart B if the motor carrier is:

(i) engaging in or transacting the business of transporting passengers by an intrastate commercial vehicle that has a seating capacity of no more than 30 passengers; and

(ii) a licensed child care provider under Section 26-39-401.

(b) Policies containing motor vehicle liability coverage for a motor carrier described under Subsection (2)(a) shall require minimum coverage of:

(i) $1,000,000 for a vehicle with a seating capacity of up to 20 passengers; or

(ii) $1,500,000 for a vehicle with a seating capacity of up to 30 passengers.

[~~(2)~~] (3) The department shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

CHAPTER 275
H. B. 316
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

TAXATION OF SURPLUS LINES OF INSURANCE

Chief Sponsor: Todd E. Kiser
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code to address the taxation of surplus lines of insurance including prohibiting local taxation and authorizing the commissioner to enter into certain agreements.

Highlighted Provisions:

This bill:

- prohibits local taxation of surplus lines insurance transactions;
- defines terms;
- authorizes the commissioner to enter into an agreement related to surplus lines insurance;
- addresses the collection of taxes and fees, if an agreement is entered into, for coverage of property, risks, or exposures located or to be performed in and out of this state; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-3-301, as last amended by Laws of Utah 2005, Chapter 124
31A-3-303, as last amended by Laws of Utah 2003, Chapters 252 and 298

ENACTS:

31A-3-305, Utah Code Annotated 1953

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

Section 1. Section 31A-3-301 is amended to read:

31A-3-301. Tax imposed on surplus lines insurance transactions.

(1) (a) An insurance transaction under Section 31A-15-103 is subject to a tax of 4-1/4% of gross premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

(b) [~~The gross~~] "Gross premium," for a surplus lines insurance transaction, means the monetary consideration for an insurance policy including [~~all~~] the fees charged to the insured, however designated.

(2) The tax imposed by this section does not apply to:

(a) ocean marine insurance;

(b) insurance premiums paid by institutions within the state system of higher education as specified in Section 53B-1-102; or

(c) annuities.

(3) [~~This tax shall be deposited~~] The department shall deposit a tax imposed by this section in the General Fund.

(4) (a) A county, city, or municipality within the state may not impose an occupation tax or other tax or fee on a surplus lines insurance transaction.

(b) Notwithstanding Subsection (4)(a), an insurer, producer, or policyholder may be subject to other taxes not described in Subsection (4)(a).

Section 2. Section 31A-3-303 is amended to read:

31A-3-303. Payment of tax.

(1) [~~The~~] (a) An insurer, [~~all~~] the producers involved in the transaction, and the policyholder are jointly and severally liable for the payment of the taxes required under Section 31A-3-301.

(b) The policyholder's liability for payment of the premium tax under Section 31A-3-301 ends when the policyholder pays the tax to [~~the~~] a producer or an insurer.

(c) The insurer and [~~all~~] the producers involved in the transaction are jointly and severally liable for the payment of the additional tax required under Section 31A-3-302.

(d) Except for the tax under Section 31A-3-302, the [~~taxes~~] policyholder shall pay a tax under this part [~~shall be paid by the policyholder who~~] and shall be billed specifically for the tax when billed for the premium.

(e) Except for the tax imposed under Section 31A-3-302, absorption of the tax by the producer or insurer is an unfair method of competition under Section 31A-23a-402.

(2) (a) The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, producers, and policyholders to use in determining the amount of taxes owed under this part, and the manner and time of payment.

(b) If a tax is not paid within the time prescribed under the commissioner's rule, a penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of default until full payment of the tax.

(3) Upon making a record of its actions, and upon reasonable cause shown, the [~~State Tax Commission~~] commissioner may waive, reduce, or compromise any of the penalties or interest imposed under this part.

(4) [~~If~~] (a) Subject to Section 31A-3-305, if a policy covers risks that are only partially located in this state, for computation of tax under this part the premium shall be reasonably allocated among the states on the basis of risk locations. However, [~~all~~] the premiums with respect to surplus lines insurance received in this state by a surplus lines

producer or charged on policies written or negotiated in or from this state are taxable in full under this part, subject to a credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

(5) [~~All~~] Subject to Section 31A-3-305, the premium taxes collected under this part by a producer or by an insurer are the property of this state.

(6) If the property of [~~any~~] a producer is seized under any process in a court in this state, or if [~~his~~] a producer's business is suspended by the action of creditors or put into the hands of an assignee, receiver, or trustee, [~~all~~] the taxes and penalties due this state under this part are preferred claims and the state is to that extent a preferred creditor.

Section 3. Section 31A-3-305 is enacted to read:

31A-3-305. Agreement related to nonadmitted insurance taxes.

(1) As used in this section:

(a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact with one or more other states.

(b) (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect to an insured, means:

(A) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(B) if 100% of the insured risk is located out of the state described in Subsection (1)(b)(i)(A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(ii) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state determined under Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of premium attributed to it under the nonadmitted insurance contract.

(iii) (A) When a group policyholder pays 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group policy holder.

(B) When a group policyholder does not pay 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group member.

(c) "Principal place of business," for purposes of determining the home state of an insured, means:

(i) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities;

(ii) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(iii) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(d) "Principal residence," with respect to determining the home state of an insured, means:

(i) the state where the insured resides for the greatest number of days during a calendar year; or

(ii) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) The commissioner may enter into an agreement to:

(a) facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance;

(b) provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications; and

(c) share information among states relating to nonadmitted insurance premium taxes.

(3) If the commissioner enters into an agreement under Subsection (2), the following apply:

(a) In addition to the full amount of gross premiums charged by the insurer for the insurance, a surplus lines producer shall collect and pay to the commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines producer.

(b) When surplus lines insurance covers property, risks, or exposures located or to be performed in and out of this state, the sum payable is calculated as follows:

(i) calculate an amount equal to the applicable tax rates under this part on that portion of the gross premiums allocated to this state pursuant to the agreement;

(ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed outside of this state pursuant to the agreement; and

(iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross premiums allocated to this state and returned to the insured.

(c) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any part of the tax.

(4) The commissioner may participate in a clearinghouse established through an agreement

described in Subsection (2) for the purpose of collecting or disbursing to reciprocal states any money collected pursuant to Subsection (3) applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement with this state, the state shall retain the net premium tax collected.

(5) The commissioner may adopt an allocation schedule included in an agreement described in Subsection (2) for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures reside.

(6) The commissioner may apply the definition of "home state" in Subsection (1) when implementing an agreement described in Subsection (2).

(7) The commissioner shall report to the Business and Labor Interim Committee regarding the nature and status of any agreement into which the commissioner enters under Subsection (2).

CHAPTER 276
H. B. 318
Passed March 4, 2011
Approved March 23, 2011
Effective May 10, 2011

MONEY MANAGEMENT ACT AMENDMENTS

Chief Sponsor: Jim Bird
Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies the Money Management Act by amending provisions for the investment of public funds by a public treasurer.

Highlighted Provisions:

This bill:

- amends the remaining term to maturity required for commercial paper used as an investment of public funds;
- requires that fixed rate corporate obligations and variable rate securities be senior unsecured obligations of the issuer to be an allowable investment for public funds;
- extends the allowable remaining term to final maturity for certain first tier commercial paper to 365 days or less;
- allows 30 days instead of 15 days for settlement of new purchases of sales of securities; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-7-11, as last amended by Laws of Utah 2008, Chapter 324

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

Section 1. Section 51-7-11 is amended to read:

51-7-11. Authorized deposits or investments of public funds.

(1) (a) Except as provided in Subsection (1)(b), a public treasurer may conduct investment transactions only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

(b) A public treasurer may[~~, in furtherance of his duties,~~] designate a certified investment adviser to make trades on behalf of the public treasurer.

(2) The remaining term to maturity of the investment may not exceed the period of availability of the funds to be invested.

(3) Except as provided in Subsection (4), all public funds may be deposited or invested only in the following assets that meet the criteria of Section 51-7-17:

(a) negotiable or nonnegotiable deposits of qualified depositories;

(b) qualifying or nonqualifying repurchase agreements and reverse repurchase agreements with qualified depositories using collateral consisting of:

(i) Government National Mortgage Association mortgage pools;

(ii) Federal Home Loan Mortgage Corporation mortgage pools;

(iii) Federal National Mortgage Corporation mortgage pools;

(iv) Small Business Administration loan pools;

(v) Federal Agriculture Mortgage Corporation pools; or

(vi) other investments authorized by this section;

(c) qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:

(i) Government National Mortgage Association mortgage pools;

(ii) Federal Home Loan Mortgage Corporation mortgage pools;

(iii) Federal National Mortgage Corporation mortgage pools;

(iv) Small Business Administration loan pools; or

(v) other investments authorized by this section;

(d) commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service or Standard and Poor's, which has a remaining term to maturity of:

(i) 270 days or less[~~;~~] for paper issued under 15 U.S.C. Sec. 77c(a)(3); or

(ii) 365 days or less for paper issued under 15 U.S.C. Sec. 77d(2);

(e) bankers' acceptances that:

(i) are eligible for discount at a Federal Reserve bank; and

(ii) have a remaining term to maturity of 270 days or less;

(f) fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or less;

(g) obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds;

(h) obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer,

unless the agency or instrumentality has become private and is no longer considered to be a government entity:

(i) Federal Farm Credit banks;

(ii) Federal Home Loan banks;

(iii) Federal National Mortgage Association;

(iv) Federal Home Loan Mortgage Corporation;

(v) Federal Agriculture Mortgage Corporation; and

(vi) Tennessee Valley Authority;

(i) fixed rate corporate obligations that:

(i) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be by Moody's Investors Service or Standard and Poor's;

(ii) are senior unsecured obligations of the issuer;

[~~(ii)~~] (iii) are publicly traded; and

[~~(iii)~~] (iv) have a remaining term to final maturity of [~~365 days~~] 13 months or less or is subject to a hard put at par value or better, within 365 days;

(j) tax anticipation notes and general obligation bonds of the state or of any county, incorporated city or town, school district, or other political subdivision of this state, including bonds offered on a when-issued basis without regard to the limitation in Subsection (7);

(k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations, including bonds offered on a when-issued basis without regard to the limitation in Subsection (7);

(l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;

(m) variable rate negotiable deposits that:

(i) are issued by a qualified depository or a permitted depository;

(ii) are repriced at least semiannually; and

(iii) have a remaining term to final maturity not to exceed two years; and

(n) variable rate securities that:

(i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be by Moody's Investors Service or Standard and Poor's;

(B) are senior unsecured obligations of the issuer;

[~~(B)~~] (C) are publicly traded;

[~~(C)~~] (D) are repriced at least semiannually; and

[~~(D)~~] (E) have a remaining term to final maturity not to exceed two years or are subject to a hard put at par value or better, within 365 days; and

(ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or any security making unscheduled periodic principal payments other than optional redemptions.

(4) The following public funds are exempt from the requirements of Subsection (3):

(a) the Employers' Reinsurance Fund created in Section 34A-2-702;

(b) the Uninsured Employers' Fund created in Section 34A-2-704; and

(c) a local government other post-employment benefits trust fund under Section 51-7-12.2.

(5) If any of the deposits authorized by Subsection (3)(a) are negotiable or nonnegotiable large time deposits issued in amounts of $100,000 or more, the interest shall be calculated on the basis of the actual number of days divided by 360 days.

(6) A public treasurer may maintain fully insured deposits in demand accounts in a federally insured nonqualified depository only if a qualified depository is not reasonably convenient to the entity's geographic location.

(7) The public treasurer shall ensure that all purchases and sales of securities are settled within:

(a) 15 days of the trade date[~~.~~] for outstanding issues; and

(b) 30 days on new issues.

CHAPTER 277
H. B. 353
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

ABORTION FREEDOM OF CONSCIENCE

Chief Sponsor: Carl Wimmer
Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill amends the portion of the Utah Criminal Code relating to abortion by replacing Utah's freedom of conscience law with a new and expanded freedom of conscience law.

Highlighted Provisions:

This bill:

- defines terms;
- provides that a health care provider may, on religious or moral grounds, refuse to perform or participate in any way in an abortion;
- provides that, except as otherwise required by law, a health care facility may refuse, on religious or moral grounds, to admit a patient for an abortion procedure or perform an abortion procedure for a patient;
- provides that a health care provider's or a health care facility's refusal, described in the preceding paragraphs, may not be the basis for civil liability or other recriminatory action;
- provides that a health care facility, employer, or other person may not take any adverse action against a health care provider for exercising the health care provider's right of refusal described in this bill;
- provides that a person who is adversely impacted by conduct prohibited by this bill may bring a civil action for equitable relief, including reinstatement, and for damages; and
- provides that a person who brings an action under this bill must commence the action within three years after the day on which the cause of action arises.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

REPEALS AND REENACTS:

76-7-306, as last amended by Laws of Utah 1995, Chapter 20

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

Section 1. Section 76-7-306 is repealed and reenacted to read:

76-7-306. Refusal to participate, admit, or treat for abortion based on religious or moral grounds -- Cause of action.

(1) As used in this section:

(a) "Health care facility" is as defined in Section 26-21-2.

(b) "Health care provider" means an individual who is an employee of, has practice privileges at, or is otherwise associated with a health care facility.

(2) A health care provider may, on religious or moral grounds, refuse to perform or participate in any way, in:

(a) an abortion; or

(b) a procedure that is intended to, or likely to, result in the termination of a pregnancy.

(3) Except as otherwise required by law, a health care facility may refuse, on religious or moral grounds, to:

(a) admit a patient for an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy; or

(b) perform for a patient an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy.

(4) A health care provider's refusal under Subsection (2) and a health care facility's refusal under Subsection (3) may not be the basis for civil liability or other recriminatory action.

(5) A health care facility, employer, or other person may not take an adverse action against a health care provider for exercising the health care provider's right of refusal described in Subsection (2), or for bringing or threatening to bring an action described in Subsection (6), including:

(a) dismissal;

(b) demotion;

(c) suspension;

(d) discipline;

(e) discrimination;

(f) harassment;

(g) retaliation;

(h) adverse change in status;

(i) termination of, adverse alteration of, or refusal to renew an association or agreement; or

(j) refusal to provide a benefit, privilege, raise, promotion, tenure, or increased status that the health care provider would have otherwise received.

(6) A person who is adversely impacted by conduct prohibited in Subsection (5) may bring a civil action for equitable relief, including reinstatement, and for damages. A person who brings an action under this section must commence the action within three years after the day on which the cause of action arises.

CHAPTER 278
H. B. 354
Passed March 10, 2011
Approved March 23, 2011
Effective January 1, 2012

INSURANCE AMENDMENTS RELATING TO ABORTION

Chief Sponsor: Carl Wimmer
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions of the Insurance Code by limiting the type of abortion coverage that may be offered in a health benefit plan, on the state health insurance exchange, or on a federally mandated health insurance exchange.

Highlighted Provisions:

This bill:

- defines the term, "permitted abortion coverage"; and
- limits the type of abortion coverage that may be offered in a health benefit plan, on the state health insurance exchange, or on a federally mandated health insurance exchange.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2012.

Utah Code Sections Affected:

ENACTS:
31A-22-726, Utah Code Annotated 1953

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

Section 1. Section 31A-22-726 is enacted to read:

31A-22-726. Abortion coverage restriction in health benefit plan and on health insurance exchange.

(1) As used in this section, "permitted abortion coverage" means coverage for abortion:

(a) that is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(b) of a fetus that has a defect that is documented by a physician or physicians to be

uniformly diagnosable and uniformly lethal; or

(c) where the woman is pregnant as a result of:

(i) rape, as described in Section 76-5-402;

(ii) rape of a child, as described in Section 76-5-402.1; or

(iii) incest, as described in Subsection 76-5-406(10) or Section 76-7-102.

(2) A person may not offer coverage for an abortion in a health benefit plan, unless the coverage is a type of permitted abortion coverage.

(3) A person may not offer a health benefit plan that provides coverage for an abortion in a health insurance exchange created under Title 63M, Chapter 1, Part 25, Health System Reform Act, unless the coverage is a type of permitted abortion coverage.

(4) A person may not offer a health benefit plan that provides coverage for an abortion in a health insurance exchange created under the federal Patient Protection and Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion coverage.

Section 2. Effective date.

This bill takes effect on January 1, 2012.

CHAPTER 279
H. B. 403
Passed March 10, 2011
Approved March 23, 2011
Effective May 10, 2011

CHANGES TO FIT PREMISES ACT

Chief Sponsor: Jennifer M. Seelig
Senate Sponsor: Wayne L. Niederhauser
Cosponsors: Tim M. Cosgrove
Susan Duckworth
Janice M. Fisher
Gage Froerer

LONG TITLE

General Description:

This bill modifies the Utah Fit Premises Act.

Highlighted Provisions:

This bill:

- prohibits an owner from taking action against a renter for requesting assistance from a public safety agency; and
- prohibits municipalities with a good landlord program from limiting owner participation in or benefits from the program under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-22-5.1, as last amended by Laws of Utah 2010, Chapter 352
57-22-7, as enacted by Laws of Utah 2010, Chapter 352

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

Section 1. Section 57-22-5.1 is amended to read:

57-22-5.1. Crime victim's right to new locks -- Domestic violence victim's right to terminate rental agreement -- Limits an owner relating to assistance from public safety agency.

(1) As used in this section[~~,~~]:

(a) "Crime victim" means a victim of:

[~~(a)~~] (i) domestic violence, as defined in Section 77-36-1;

[~~(b)~~] (ii) stalking as defined in Section 76-5-106.5;

[~~(c)~~] (iii) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;

[~~(d)~~] (iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or

[~~(e)~~] (v) dating violence, consisting of verbal, emotional, psychological, physical, or sexual abuse of one person by another in a dating relationship.

(b) "Public safety agency" means a governmental entity that provides fire protection, law enforcement, ambulance, medical, or similar service.

(2) An acceptable form of documentation of an act listed in Subsection (1) is:

(a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, subsequent to a hearing of which the petitioner and respondent have been given notice under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; or

(b) a copy of a police report documenting an act listed in Subsection (1).

(3) (a) A renter who is a crime victim may require the renter's owner to install a new lock to the renter's residential rental unit if the renter:

(i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1); and

(ii) pays for the cost of installing the new lock.

(b) An owner may comply with Subsection (3)(a) by:

(i) rekeying the lock if the lock is in good working condition; or

(ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than the lock being replaced.

(c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens the new lock.

(d) Notwithstanding any rental agreement, an owner who installs a new lock under Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in Subsection (1).

(e) Notwithstanding Section 78B-6-814, if an owner refuses to provide a copy of the key under Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit by a protective order but is a renter on the rental agreement, the perpetrator may file a petition with a court of competent jurisdiction within 30 days to:

(i) establish whether the perpetrator should be given a key and allowed access to the residential rental unit; or

(ii) whether the perpetrator should be relieved of further liability under the rental agreement because of the owner's exclusion of the perpetrator from the residential rental unit.

(f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further liability under the rental agreement if the perpetrator is found by the court to have committed the act upon which the landlord's exclusion of the perpetrator is based.

(4) A renter who is a victim of domestic violence, as defined in Section 77-36-1, may terminate a rental agreement if the renter:

(a) is in compliance with:

(i) all provisions of Section 57-22-5; and

(ii) all obligations under the rental agreement;

(b) provides the owner:

(i) written notice of termination; and

(ii) a protective order protecting the renter from a domestic violence perpetrator or a copy of a police report documenting that the renter is a victim of domestic violence and did not participate in the violence; and

(c) no later than the date that the renter provides a notice of termination under Subsection (4)(b)(i), pays the owner the equivalent of 45 days' rent for the period beginning on the date that the renter provides the notice of termination.

(5) An owner may not:

(a) impose a restriction on a renter's ability to request assistance from a public safety agency; or

(b) penalize or evict a renter because the renter makes reasonable requests for assistance from a public safety agency.

Section 2. Section 57-22-7 is amended to read:

57-22-7. Limitation on counties and municipalities.

(1) A county or municipality may not adopt an ordinance, resolution, or regulation that is inconsistent with this chapter.

(2) (a) Subsection (1) may not be construed to limit the ability of a county or municipality to enforce an applicable administrative remedy with respect to a residential rental unit for a violation of a county or municipal ordinance, subject to Subsection (2)(b).

(b) A county or municipality's enforcement of an administrative remedy may not have the effect of:

(i) modifying the time requirements of a corrective period, as defined in Section 57-22-6;

(ii) limiting or otherwise affecting a tenant's remedies under Section 57-22-6; or

(iii) modifying an owner's obligation under this chapter to a tenant relating to the habitability of a residential rental unit.

(3) A municipality with a good landlord program under Subsection 10-1-203(5)(e) may not limit an owner's participation in the program or reduce program benefits to the owner because of renter or crime victim action that the owner is prohibited under Subsection 57-22-5.1(5) from restricting or penalizing.

CHAPTER 280
H. B. 415
Passed March 9, 2011
Approved March 23, 2011
Effective May 10, 2011

SCHOOLS FOR THE DEAF AND BLIND FOUNDATION

Chief Sponsor: Stephen G. Handy
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Public-Private Partnership for Education Excellence Act by enabling the Utah Schools for the Deaf and Blind to establish a non-profit foundation.

Highlighted Provisions:

This bill:

- authorizes the Utah Schools for the Deaf and Blind to establish a non-profit foundation; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-4-205, as last amended by Laws of Utah 2008, Chapter 310

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

Section 1. Section 53A-4-205 is amended to read:

53A-4-205. Establishment of public education foundations -- Powers and duties -- Tax exempt status.

(1) [~~State and~~] The State Board of Education, a local school [~~boards~~] board, or the Utah Schools for the Deaf and Blind may establish foundations to:

(a) assist in the development and implementation of the programs authorized under this part to promote educational excellence; and

(b) assist in the accomplishment of other education-related objectives.

(2) A foundation established under Subsection (1):

(a) may solicit and receive contributions from private enterprises for the purpose of this part;

(b) shall comply with Title 51, Chapter 7, State Money Management Act, and rules made under the act;

(c) has no power or authority to incur contractual obligations or liabilities that constitute a claim against public funds except as provided in this section;

(d) may not exercise executive, administrative, or rulemaking authority over the programs referred to in this part, except to the extent specifically authorized by the responsible school board;

(e) is exempt from all taxes levied by the state or any of its political subdivisions with respect to activities conducted under this part;

(f) may participate in the Risk Management Fund under Section 63A-4-204;

(g) shall provide a school with information detailing transactions and balances of funds managed for that school;

(h) shall, for foundation accounts from which monies are distributed to schools, provide all the schools within a school district information that:

(i) details account transactions; and

(ii) shows available balances in the accounts; and

(i) may not:

(i) engage in lobbying activities;

(ii) attempt to influence legislation; or

(iii) participate in any campaign activity for or against:

(A) a political candidate; or

(B) an initiative, referendum, proposed constitutional amendment, bond, or any other ballot proposition submitted to the voters.

(3) A local school board that establishes a foundation under Subsection (1) shall:

(a) require the foundation to:

(i) use the school district's accounting system; or

(ii) follow written accounting policies established by the board;

(b) review and approve the foundation's accounting, purchasing, and check issuance policies to ensure that there is an adequate separation of responsibilities; and

(c) approve procedures to verify that issued foundation payments have been properly approved.

CHAPTER 281
H. B. 440
Passed March 4, 2011
Approved March 23, 2011
Effective July 1, 2011

BEER TAX AMENDMENTS

Chief Sponsor: Val L. Peterson
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to revenue and taxation to address deposits of revenue generated by the beer tax.

Highlighted Provisions:

This bill:

- modifies the formula to determine the amount of revenue collected from the beer tax to be deposited into the Alcoholic Beverage Enforcement and Treatment Restricted Account; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-15-109 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapter 276

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

Section 1. Section 59-15-109 (Effective 07/01/11) is amended to read:

59-15-109 (Effective 07/01/11). Tax money to be paid to state treasurer.

(1) Taxes collected under this chapter shall be paid by the commission to the state treasurer daily for deposit as follows:

(a) the greater of the following shall be deposited into the Alcoholic Beverage Enforcement and Treatment Restricted Account created in Section 32B-2-403:

(i) an amount calculated by:

[~~(i)~~] (A) determining an amount equal to 40% of the revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made; [~~or~~] and

(B) subtracting $30,000 from the amount determined under Subsection (1)(a)(i)(A); or

(ii) $4,350,000; and

(b) the revenue collected in excess of the amount deposited in accordance with Subsection (1)(a) shall be deposited into the General Fund.

(2) (a) The commission shall notify the entities described in Subsection (2)(b) not later than the September 1 preceding the fiscal year of the deposit of:

(i) the amount of the proceeds of the beer excise tax collected in accordance with this section for the fiscal year two years preceding the fiscal year of deposit; and

(ii) an amount equal to 40% of the amount listed in Subsection (2)(a)(i).

(b) The notification required by Subsection (2)(a) shall be sent to:

(i) the Governor's Office of Planning and Budget; and

(ii) the Legislative Fiscal Analyst.

Section 2. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 282
H. B. 446
Passed March 9, 2011
Approved March 23, 2011
Effective May 10, 2011

LOCAL DISTRICT TAX AMENDMENTS

Chief Sponsor: Derek E. Brown
Senate Sponsor: Curtis S. Bramble
Cosponsors: Jackie Biskupski
Rebecca P. Edwards
Carl Wimmer

LONG TITLE

General Description:

This bill amends local district property tax provisions.

Highlighted Provisions:

This bill:

- amends provisions relating to a local district property tax; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-1002, as last amended by Laws of Utah 2008, Chapter 360

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

Section 1. Section 17B-1-1002 is amended to read:

17B-1-1002. Limit on local district property tax levy -- Exclusions.

(1) The rate at which a local district levies a property tax for district operation and maintenance expenses on the taxable value of taxable property within the district may not exceed:

(a) .0008, for a basic local district;

(b) .0004, for a cemetery maintenance district;

(c) .0004, for a drainage district;

(d) .0008, for a fire protection district;

(e) .0008, for an improvement district;

(f) .0005, for a metropolitan water district;

(g) .0004, for a mosquito abatement district;

(h) .0004, for a public transit district;

(i) (i) .0023, for a service area that:

(A) is located in a county of the first or second class; and

(B) (I) provides fire protection, paramedic, and emergency services; or

(II) subject to Subsection (3), provides law enforcement services; or

(ii) .0014, for each other service area; or

(j) the rates provided in Section 17B-2a-1006, for a water conservancy district.

(2) Property taxes levied by a local district are excluded from the limit applicable to that district under Subsection (1) if the taxes are:

(a) levied under Section 17B-1-1103 by a local district, other than a water conservancy district, to pay principal of and interest on general obligation bonds issued by the district;

(b) levied to pay debt and interest owed to the United States; or

(c) levied to pay assessments or other amounts due to a water users association or other public cooperative or private entity from which the district procures water.

(3) A service area described in Subsection (1)(i)(i)(B)(II) may not collect a tax described in Subsection (1)(i)(i) if a municipality or a county having a right to appoint a member to the board of trustees of the service area under Subsection 17B-2a-905(2) assesses on or after November 30 in the year in which the tax is first collected and each subsequent year that the tax is collected:

(a) a generally assessed fee imposed under Section 17B-1-643 for law enforcement services; or

(b) any other generally assessed fee for law enforcement services.

CHAPTER 283
H. B. 490
Passed March 9, 2011
Approved March 23, 2011
Effective May 10, 2011

UTAH STATE FLAG DAY COMMEMORATION

Chief Sponsor: Julie Fisher
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill designates March 9 as Utah State Flag Day.

Highlighted Provisions:

This bill:

- designates that March 9 shall be commemorated annually as Utah State Flag Day.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-1-401, as last amended by Laws of Utah 2010, Chapter 224

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

Section 1. Section 63G-1-401 is amended to read:

63G-1-401. Commemorative periods.

(1) The following days shall be commemorated yearly:

(a) Bill of Rights Day, on December 15;

(b) Constitution Day, on September 17;

(c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the U.S. armed forces around the world in defense of freedom;

(d) POW/MIA Recognition Day, on the third Friday in September; [~~and~~]

(e) Indigenous People Day, the Monday immediately preceding Thanksgiving[~~.~~]; and

(f) Utah State Flag Day, on March 9.

(2) The Department of Veterans' Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of November shall be commemorated yearly as American Indian Heritage Month.

(4) The first full week of May shall be commemorated yearly as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

(5) January 24, 2011, shall be commemorated as John M. Browning Day.

CHAPTER 284
H. B. 19
Passed February 23, 2011
Approved March 25, 2011
Effective May 10, 2011
(Exception clause in Sections 58 and 59)

INSURANCE LAW
RELATED AMENDMENTS

Chief Sponsor: James A. Dunnigan
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Insurance Code and other provisions related to the regulation of insurance and insurance products.

Highlighted Provisions:

This bill:

- amends definitions;
- creates the Insurance Department Restricted Account;
- addresses fees for captive insurance companies and the cap on the Captive Insurance Restricted Account;
- modifies restrictions on foreign title insurers;
- removes outdated language;
- addresses grace periods for accident and health insurance policies;
- modifies provisions related to individuals, group, or blanket accident and health insurance coverage;
- addresses health benefit plan offerings;
- addresses producer lines of authority;
- addresses a written agreement related to a voluntary surrender of a license;
- amends provisions related to continuing education;
- provides for training related to long-term care insurance;
- modifies title insurance agency and producer licensing requirements;
- addresses when a title insurance producer may do an escrow involving a real property transaction;
- modifies provisions related to disbursements from escrow accounts;
- modifies title insurance related assessments;
- addresses licensee compensation;
- addresses when a person may represent that the person acts in behalf of an insurer;
- modifies provisions related to providing the commissioner address, telephone, and email address information;
- addresses verification under a nonresident jurisdictional agreement;
- addresses per diem and travel expenses of public representatives on the board of directors of the Utah Life and Health Insurance Guaranty Association;
- addresses the establishment of classes of business;
- modifies rating restrictions;
- addresses the renewal of a bail bond surety company license;
- permits the commissioner to assign a department employee to engage in certain activities related to the regulation of captive insurance companies;
- requires a professional employer organization to notify the commissioner of material changes;
- removes the title insurance assessment from the sunset act;
- converts certain dedicated credits into several restricted accounts and provides that related appropriations are nonlapsing; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has an effective date.

This bill provides for retrospective operation of certain provisions.

Utah Code Sections Affected:

AMENDS:

31A-1-301, as last amended by Laws of Utah 2010, Chapter 10
31A-2-208, as last amended by Laws of Utah 2010, Chapter 391
31A-2-212, as last amended by Laws of Utah 2007, Chapter 309
31A-3-101, as last amended by Laws of Utah 2008, Chapter 382
31A-3-103, as last amended by Laws of Utah 2010, Chapter 10
31A-3-304, as last amended by Laws of Utah 2010, Chapters 10, 68 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 265
31A-14-211, as last amended by Laws of Utah 2003, Chapter 298
31A-22-607, as last amended by Laws of Utah 2004, Chapter 329
31A-22-610.6, as enacted by Laws of Utah 2008, Chapters 345, 383, and 390
31A-22-614.5, as last amended by Laws of Utah 2010, Chapter 357
31A-22-618.5, as last amended by Laws of Utah 2010, Chapter 68
31A-22-625, as last amended by Laws of Utah 2010, Chapters 10 and 68
31A-22-701, as last amended by Laws of Utah 2010, Chapter 10
31A-22-716, as last amended by Laws of Utah 2005, Chapter 71
31A-22-721, as last amended by Laws of Utah 2004, Chapter 329
31A-22-723, as last amended by Laws of Utah 2010, Chapter 68
31A-23a-102, as last amended by Laws of Utah 2009, Chapter 349
31A-23a-106, as last amended by Laws of Utah 2009, Chapter 349
31A-23a-111, as last amended by Laws of Utah 2009, Chapters 349 and 355
31A-23a-202, as last amended by Laws of Utah 2009, Chapter 127
31A-23a-203, as last amended by Laws of Utah 2009, Chapter 349
31A-23a-204, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-406, as last amended by Laws of Utah 2007, Chapter 325
31A-23a-408, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-23a-412, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-23a-415, as last amended by Laws of Utah 2010, Chapter 10 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 265
31A-23a-501, as last amended by Laws of Utah 2010, Chapter 10
31A-25-208, as last amended by Laws of Utah 2009, Chapter 349
31A-26-206, as last amended by Laws of Utah 2008, Chapter 382
31A-26-208, as last amended by Laws of Utah 2008, Chapter 3
31A-26-213, as last amended by Laws of Utah 2009, Chapter 349
31A-26-306, as last amended by Laws of Utah 2004, Chapter 173
31A-28-107, as last amended by Laws of Utah 2010, Chapter 292
31A-29-103, as last amended by Laws of Utah 2008, Chapters 3 and 385
31A-29-106, as last amended by Laws of Utah 2008, Chapter 382
31A-30-103, as last amended by Laws of Utah 2010, Chapter 68
31A-30-105, as last amended by Laws of Utah 2010, Chapter 68
31A-30-106, as last amended by Laws of Utah 2010, Chapter 68
31A-30-106.1, as enacted by Laws of Utah 2010, Chapter 68
31A-30-106.5, as last amended by Laws of Utah 2010, Chapter 68
31A-30-108, as last amended by Laws of Utah 2008, Chapter 383
31A-30-110, as last amended by Laws of Utah 2002, Chapter 308
31A-30-112, as last amended by Laws of Utah 2009, Chapter 12
31A-31-108, as last amended by Laws of Utah 2010, Chapter 391
31A-31-109, as last amended by Laws of Utah 2010, Chapter 391
31A-35-202, as last amended by Laws of Utah 2000, Chapter 259
31A-35-406, as last amended by Laws of Utah 2010, Chapter 10
31A-35-602, as last amended by Laws of Utah 2000, Chapter 259
31A-37-103, as last amended by Laws of Utah 2008, Chapter 302
31A-37-202, as last amended by Laws of Utah 2009, Chapter 183
31A-37-504, as last amended by Laws of Utah 2007, Chapter 309
59-9-105, as last amended by Laws of Utah 2002, Chapter 308
63I-2-231, as last amended by Laws of Utah 2010, Chapters 68 and 285
63J-1-602.2, as enacted by Laws of Utah 2010, Chapter 265 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 265
63J-1-602.3, as enacted by Laws of Utah 2010, Chapter 265

ENACTS:
31A-40-308, Utah Code Annotated 1953

Uncodified Material Affected:
ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 31A-1-301 is amended to read:

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

(1) (a) "Accident and health insurance" means insurance to provide protection against economic losses resulting from:

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) a long-term care contract; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage;

(D) loss of income coverage;

(E) prescription drug coverage;

(F) dental coverage; or

(G) vision coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Administrator" is defined in Subsection [~~(159)~~] (161).

(4) "Adult" means an individual who has attained the age of at least 18 years.

(5) "Affiliate" means a person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of individuals manage the corporations.

(6) "Agency" means:

(a) a person other than an individual, including a sole proprietorship by which an individual does business under an assumed name; and

(b) an insurance organization licensed or required to be licensed under Section 31A-23a-301, 31A-25-207, or 31A-26-209.

(7) "Alien insurer" means an insurer domiciled outside the United States.

(8) "Amendment" means an endorsement to an insurance policy or certificate.

(9) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more individuals if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(10) "Application" means a document:

(a) (i) completed by an applicant to provide information about the risk to be insured; and

(ii) that contains information that is used by the insurer to evaluate risk and decide whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk; or

(b) used by the insurer to gather information from the applicant before issuance of an annuity contract.

(11) "Articles" or "articles of incorporation" means:

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

(h) another constitutive document for a trust or other entity that is not a corporation; and

(i) an amendment to an item listed in Subsections (11)(a) through (h).

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, up to and including surrender of the person in execution of a sentence imposed under Subsection 77-20-7(1), as a condition to the release of that person from confinement.

(13) "Binder" is defined in Section 31A-21-102.

(14) "Blanket insurance policy" means a group policy covering a defined class of persons:

(a) without individual underwriting or application; and

(b) that is determined by definition [~~with or~~] without designating each person covered.

(15) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated.

(16) "Bona fide office" means a physical office in this state:

(a) that is open to the public;

(b) that is staffed during regular business hours on regular business days; and

(c) at which the public may appear in person to obtain services.

[~~(16)~~] (17) "Business entity" means:

(a) a corporation;

(b) an association;

(c) a partnership;

(d) a limited liability company;

(e) a limited liability partnership; or

(f) another legal entity.

[~~(17)~~] (18) "Business of insurance" is defined in Subsection [~~(85)~~] (87).

[~~(18)~~] (19) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections apply by reference under:

(a) Section 31A-7-201;

(b) Section 31A-8-205; or

(c) Subsection 31A-9-205(2).

[~~(19)~~] (20) (a) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated.

(b) "Bylaws" includes comparable rules for a trust or other entity that is not a corporation.

[~~(20)~~] (21) "Captive insurance company" means:

(a) an insurer:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or

(b) in the case of a group or association, an insurer:

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) a member organization;

(B) a group member; or

(C) an affiliate of:

(I) a member organization; or

(II) a group member.

[~~(21)~~] (22) "Casualty insurance" means liability insurance.

[~~(22)~~] (23) "Certificate" means evidence of insurance given to:

(a) an insured under a group insurance policy; or

(b) a third party.

[~~(23)~~] (24) "Certificate of authority" is included within the term "license."

[~~(24)~~] (25) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of a benefit according to the terms of an insurance policy.

[~~(25)~~] (26) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

[~~(26)~~] (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection [~~(26)~~] (27)(a) apply to the equivalent supervisory official of another jurisdiction.

[~~(27)~~] (28) (a) "Continuing care insurance" means insurance that:

(i) provides board and lodging;

(ii) provides one or more of the following:

(A) a personal service;

(B) a nursing service;

(C) a medical service; or

(D) any other health-related service; and

(iii) provides the coverage described in this Subsection [~~(27)~~] (28)(a) under an agreement effective:

(A) for the life of the insured; or

(B) for a period in excess of one year.

(b) Insurance is continuing care insurance regardless of whether or not the board and lodging are provided at the same location as a service described in Subsection [~~(27)~~] (28)(a)(ii).

[~~(28)~~] (29) (a) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be:

(i) by contract;

(ii) by common management;

(iii) through the ownership of voting securities; or

(iv) by a means other than those described in Subsections [~~(28)~~] (29)(a)(i) through (iii).

(b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.

(c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.

(d) There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person.

[~~(29)~~] (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a producer.

[~~(30)~~] (31) "Controlling person" means a person that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

[~~(31)~~] (32) "Controlling producer" means a producer who directly or indirectly controls an insurer.

[~~(32)~~] (33) (a) "Corporation" means an insurance corporation, except when referring to:

(i) a corporation doing business:

(A) as:

(I) an insurance producer;

(II) a limited line producer;

(III) a consultant;

(IV) a managing general agent;

(V) a reinsurance intermediary;

(VI) a third party administrator; or

(VII) an adjuster; and

(B) under:

(I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;

(II) Chapter 25, Third Party Administrators; or

(III) Chapter 26, Insurance Adjusters; or

(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.

(b) "Stock corporation" means a stock insurance corporation.

(c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

[~~(33)~~] (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~].

(b) "Creditable coverage" includes coverage that is offered through a public health plan such as:

(i) the Primary Care Network Program under a Medicaid primary care network demonstration waiver obtained subject to Section 26-18-3;

(ii) the Children's Health Insurance Program under Section 26-40-106; or

(iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

[~~(34)~~] (35) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

[~~(35)~~] (36) (a) "Credit insurance" means insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation.

(b) "Credit insurance" includes:

(i) credit accident and health insurance;

(ii) credit life insurance;

(iii) credit property insurance;

(iv) credit unemployment insurance;

(v) guaranteed automobile protection insurance;

(vi) involuntary unemployment insurance;

(vii) mortgage accident and health insurance;

(viii) mortgage guaranty insurance; and

(ix) mortgage life insurance.

[~~(36)~~] (37) "Credit life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays a person if the debtor dies.

[~~(37)~~] (38) "Credit property insurance" means insurance:

(a) offered in connection with an extension of credit; and

(b) that protects the property until the debt is paid.

[~~(38)~~] (39) "Credit unemployment insurance" means insurance:

(a) offered in connection with an extension of credit; and

(b) that provides indemnity if the debtor is unemployed for payments coming due on a:

(i) specific loan; or

(ii) credit transaction.

[~~(39)~~] (40) "Creditor" means a person, including an insured, having a claim, whether:

(a) matured;

(b) unmatured;

(c) liquidated;

(d) unliquidated;

(e) secured;

(f) unsecured;

(g) absolute;

(h) fixed; or

(i) contingent.

[~~(40)~~] (41) (a) "Customer service representative" means a person that provides an insurance service and insurance product information:

(i) for the customer service representative's:

(A) producer; or

(B) consultant employer; and

(ii) to the customer service representative's employer's:

(A) customer;

(B) client; or

(C) organization.

(b) A customer service representative may only operate within the scope of authority of the customer service representative's producer or consultant employer.

[~~(41)~~] (42) "Deadline" means a final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order; and

(b) by which a required filing or payment must be received by the department.

[~~(42)~~] (43) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is considered to have taken a specific action. If the statute so provides, a condition precedent may be the commissioner's failure to take a specific action.

[~~(43)~~] (44) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

[~~(44)~~] (45) "Department" means the Insurance Department.

[~~(45)~~] (46) "Director" means a member of the board of directors of a corporation.

[~~(46)~~] (47) "Disability" means a physiological or psychological condition that partially or totally limits an individual's ability to:

(a) perform the duties of:

(i) that individual's occupation; or

(ii) any occupation for which the individual is reasonably suited by education, training, or experience; or

(b) perform two or more of the following basic activities of daily living:

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

[~~(47)~~] (48) "Disability income insurance" is defined in Subsection [~~(76)~~] (78).

[~~(48)~~] (49) "Domestic insurer" means an insurer organized under the laws of this state.

[~~(49)~~] (50) "Domiciliary state" means the state in which an insurer:

(a) is incorporated;

(b) is organized; or

(c) in the case of an alien insurer, enters into the United States.

[~~(50)~~] (51) (a) "Eligible employee" means:

(i) an employee who:

(A) works on a full-time basis; and

(B) has a normal work week of 30 or more hours; or

(ii) a person described in Subsection [~~(50)~~] (51)(b).

(b) "Eligible employee" includes, if the individual is included under a health benefit plan of a small employer:

(i) a sole proprietor;

(ii) a partner in a partnership; or

(iii) an independent contractor.

(c) "Eligible employee" does not include, unless eligible under Subsection [~~(50)~~] (51)(b):

(i) an individual who works on a temporary or substitute basis for a small employer;

(ii) an employer's spouse; or

(iii) a dependent of an employer.

[~~(51)~~] (52) "Employee" means an individual employed by an employer.

[~~(52)~~] (53) "Employee benefits" means one or more benefits or services provided to:

(a) an employee; or

(b) a dependent of an employee.

[~~(53)~~] (54) (a) "Employee welfare fund" means a fund:

(i) established or maintained, whether directly or through a trustee, by:

(A) one or more employers;

(B) one or more labor organizations; or

(C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund:

(A) by or on behalf of an employer doing business in this state; or

(B) for the benefit of a person employed in this state.

(b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax revenues.

[~~(54)~~] (55) "Endorsement" means a written agreement attached to a policy or certificate to modify the policy or certificate coverage.

[~~(55)~~] (56) "Enrollment date," with respect to a health benefit plan, means:

(a) the first day of coverage; or

(b) if there is a waiting period, the first day of the waiting period.

[~~(56)~~] (57) (a) "Escrow" means:

(i) a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) "Escrow" includes the act of conducting a:

(i) real estate settlement; or

(ii) real estate closing.

[~~(57)~~] (58) "Escrow agent" means:

(a) an insurance producer with:

(i) a title insurance line of authority; and

(ii) an escrow subline of authority; or

(b) a person defined as an escrow agent in Section 7-22-101.

[~~(58)~~] (59) (a) "Excludes" is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term "excludes" are representative examples for use in interpretation of this title.

[~~(59)~~] (60) "Exclusion" means for the purposes of accident and health insurance that an insurer does not provide insurance coverage, for whatever reason, for one of the following:

(a) a specific physical condition;

(b) a specific medical procedure;

(c) a specific disease or disorder; or

(d) a specific prescription drug or class of prescription drugs.

[~~(60)~~] (61) "Expense reimbursement insurance" means insurance:

(a) written to provide a payment for an expense relating to hospital confinement resulting from illness or injury; and

(b) written:

(i) as a daily limit for a specific number of days in a hospital; and

(ii) to have a one or two day waiting period following a hospitalization.

[~~(61)~~] (62) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding a position of public or private trust.

[~~(62)~~] (63) (a) "Filed" means that a filing is:

(i) submitted to the department as required by and in accordance with applicable statute, rule, or filing order;

(ii) received by the department within the time period provided in applicable statute, rule, or filing order; and

(iii) accompanied by the appropriate fee in accordance with:

(A) Section 31A-3-103; or

(B) rule.

(b) "Filed" does not include a filing that is rejected by the department because it is not submitted in accordance with Subsection [~~(62)~~] (63)(a).

[~~(63)~~] (64) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

(n) an advertisement; or

(o) an outline of coverage.

[~~(64)~~] (65) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

[~~(65)~~] (66) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

[~~(66)~~] (67) (a) "Form" means one of the following prepared for general use:

(i) a policy;

(ii) a certificate;

(iii) an application;

(iv) an outline of coverage; or

(v) an endorsement.

(b) "Form" does not include a document specially prepared for use in an individual case.

[~~(67)~~] (68) "Franchise insurance" means an individual insurance policy provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

[~~(68)~~] (69) "General lines of authority" include:

(a) the general lines of insurance in Subsection [~~(69)~~] (70);

(b) title insurance under one of the following sublines of authority:

(i) search, including authority to act as a title marketing representative;

(ii) escrow, including authority to act as a title marketing representative; and

(iii) title marketing representative only;

(c) surplus lines;

(d) workers' compensation; and

(e) any other line of insurance that the commissioner considers necessary to recognize in the public interest.

[~~(69)~~] (70) "General lines of insurance" include:

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

(f) variable contracts, including variable life and annuity.

[~~(70)~~] (71) "Group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care:

(a) (i) to an employee; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through another method.

[~~(71)~~] (72) (a) "Group insurance policy" means a policy covering a group of persons that is issued:

(i) to a policyholder on behalf of the group; and

(ii) for the benefit of a member of the group who is selected under a procedure defined in:

(A) the policy; or

(B) an agreement that is collateral to the policy.

(b) A group insurance policy may include a member of the policyholder's family or a dependent.

[~~(72)~~] (73) "Guaranteed automobile protection insurance" means insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

[~~(73)~~] (74) (a) Except as provided in Subsection [~~(73)~~] (74)(b), "health benefit plan" means a policy or certificate that:

(i) provides health care insurance;

(ii) provides major medical expense insurance; or

(iii) is offered as a substitute for hospital or medical expense insurance, such as:

(A) a hospital confinement indemnity; or

(B) a limited benefit plan.

(b) "Health benefit plan" does not include a policy or certificate that:

(i) provides benefits solely for:

(A) accident;

(B) dental;

(C) income replacement;

(D) long-term care;

(E) a Medicare supplement;

(F) a specified disease;

(G) vision; or

(H) a short-term limited duration; or

(ii) is offered and marketed as supplemental health insurance.

[~~(74)~~] (75) "Health care" means any of the following intended for use in the diagnosis, treatment, mitigation, or prevention of a human ailment or impairment:

(a) a professional service;

(b) a personal service;

(c) a facility;

(d) equipment;

(e) a device;

(f) supplies; or

(g) medicine.

[~~(75)~~] (76) (a) "Health care insurance" or "health insurance" means insurance providing:

(i) a health care benefit; or

(ii) payment of an incurred health care expense.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing a benefit for:

(i) replacement of income;

(ii) short-term accident;

(iii) fixed indemnity;

(iv) credit accident and health;

(v) supplements to liability;

(vi) workers' compensation;

(vii) automobile medical payment;

(viii) no-fault automobile;

(ix) equivalent self-insurance; or

(x) a type of accident and health insurance coverage that is a part of or attached to another type of policy.

(77) "Health Insurance Portability and Accountability Act" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended.

[~~(76)~~] (78) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

[~~(77)~~] (79) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

[~~(78)~~] (80) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

[~~(79)~~] (81) "Independently procured insurance" means insurance procured under Section 31A-15-104.

[~~(80)~~] (82) "Individual" means a natural person.

[~~(81)~~] (83) "Inland marine insurance" includes insurance covering:

(a) property in transit on or over land;

(b) property in transit over water by means other than boat or ship;

(c) bailee liability;

(d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and

(e) personal and commercial property floaters.

[~~(82)~~] (84) "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as the debts and obligations mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or

(c) an insurer is determined to be hazardous under this title.

[~~(83)~~] (85) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;

(ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

[~~(84)~~] (86) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

[~~(85)~~] (87) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance by an organization that is or is required to be licensed under this title;

(b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:

(i) by a single employer or by multiple employer groups; or

(ii) through one or more trusts, associations, or other entities;

(c) providing an annuity:

(i) including an annuity issued in return for a gift; and

(ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of a motor club as outlined in Subsection [~~(113)~~] (115);

(e) providing another person with insurance;

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including:

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

(v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance; [~~and~~]

[~~(vi)~~] (h) transacting or proposing a life settlement; and

[~~(h)~~] (i) doing, or proposing to do, any business in substance equivalent to Subsections [~~(85)~~] (87)(a) through [~~(g)~~] (h) in a manner designed to evade this title.

[~~(86)~~] (88) "Insurance consultant" or "consultant" means a person who:

(a) advises another person about insurance needs and coverages;

(b) is compensated by the person advised on a basis not directly related to the insurance placed; and

(c) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer or producer for advice given.

[~~(87)~~] (89) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

[~~(88)~~] (90) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

[~~(b) With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:~~]

[~~(i) "producer~~] (b) (i) "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating [~~a~~] an insurance product of that insurer[~~; and~~].

(ii) "Producer for the insurer" may be referred to as an "agent."

[~~(ii) "producer~~] (c) (i) "Producer for the insured" means a producer who:

(A) is compensated directly and only by an insurance customer or an insured; and

(B) receives no compensation directly or indirectly from an insurer for selling, soliciting, or

negotiating [~~a~~] an insurance product of that insurer to an insurance customer or insured.

(ii) "Producer for the insured" may be referred to as a "broker."

[~~(89)~~] (91) (a) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy and includes:

(i) a policyholder;

(ii) a subscriber;

(iii) a member; and

(iv) a beneficiary.

(b) The definition in Subsection [~~(89)~~] (91)(a):

(i) applies only to this title; and

(ii) does not define the meaning of this word as used in an insurance policy or certificate.

[~~(90)~~] (92) (a) "Insurer" means a person doing an insurance business as a principal including:

(i) a fraternal benefit society;

(ii) an issuer of a gift annuity other than an annuity specified in Subsections 31A-22-1305(2) and (3);

(iii) a motor club;

(iv) an employee welfare plan; and

(v) a person purporting or intending to do an insurance business as a principal on that person's own account.

(b) "Insurer" does not include a governmental entity to the extent the governmental entity is engaged in an activity described in Section 31A-12-107.

[~~(91)~~] (93) "Interinsurance exchange" is defined in Subsection [~~(142)~~] (144).

[~~(92)~~] (94) "Involuntary unemployment insurance" means insurance:

(a) offered in connection with an extension of credit; and

(b) that provides indemnity if the debtor is involuntarily unemployed for payments coming due on a:

(i) specific loan; or

(ii) credit transaction.

[~~(93)~~] (95) "Large employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least 51 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

[~~(94)~~] (96) "Late enrollee," with respect to an employer health benefit plan, means an individual whose enrollment is a late enrollment.

[~~(95)~~] (97) "Late enrollment," with respect to an employer health benefit plan, means enrollment of an individual other than:

(a) on the earliest date on which coverage can become effective for the individual under the terms of the plan; or

(b) through special enrollment.

[~~(96)~~] (98) (a) Except for a retainer contract or legal assistance described in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a specified legal expense.

(b) "Legal expense insurance" includes an arrangement that creates a reasonable expectation of an enforceable right.

(c) "Legal expense insurance" does not include the provision of, or reimbursement for, legal services incidental to other insurance coverage.

[~~(97)~~] (99) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of a human being, or for damage to property, exclusive of the coverages under:

(A) Subsection [~~(107)~~] (109) for medical malpractice insurance;

(B) Subsection [~~(134)~~] (136) for professional liability insurance; and

(C) Subsection [~~(168)~~] (170) for workers' compensation insurance;

(ii) for a medical, hospital, surgical, and funeral benefit to a person other than the insured who is injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of a human being, exclusive of the coverages under:

(A) Subsection [~~(107)~~] (109) for medical malpractice insurance;

(B) Subsection [~~(134)~~] (136) for professional liability insurance; and

(C) Subsection [~~(168)~~] (170) for workers' compensation insurance;

(iii) for loss or damage to property resulting from an accident to or explosion of a boiler, pipe, pressure container, machinery, or apparatus;

(iv) for loss or damage to property caused by:

(A) the breakage or leakage of a sprinkler, water pipe, or water container; or

(B) water entering through a leak or opening in a building; or

(v) for other loss or damage properly the subject of insurance not within another kind of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance;

(ii) residential dwelling liability insurance; and

(iii) making inspection of, and issuing a certificate of inspection upon, an elevator, boiler, machinery, or apparatus of any kind when done in connection with insurance on the elevator, boiler, machinery, or apparatus.

[~~(98)~~] (100) (a) "License" means authorization issued by the commissioner to engage in an activity that is part of or related to the insurance business.

(b) "License" includes a certificate of authority issued to an insurer.

[~~(99)~~] (101) (a) "Life insurance" means:

(i) insurance on a human life; and

(ii) insurance pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting a death benefit;

(ii) granting an annuity benefit;

(iii) granting an endowment benefit;

(iv) granting an additional benefit in the event of death by accident;

(v) granting an additional benefit to safeguard the policy against lapse; and

(vi) providing an optional method of settlement of proceeds.

[~~(100)~~] (102) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

[~~(101)~~] (103) "Limited line credit insurance" includes the following forms of insurance:

(a) credit life;

(b) credit accident and health;

(c) credit property;

(d) credit unemployment;

(e) involuntary unemployment;

(f) mortgage life;

(g) mortgage guaranty;

(h) mortgage accident and health;

(i) guaranteed automobile protection; and

(j) another form of insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing the credit obligation; and

(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

[~~(102)~~] (104) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to an individual through a master, corporate, group, or individual policy.

[~~(103)~~] (105) "Limited line insurance" includes:

(a) bail bond;

(b) limited line credit insurance;

(c) legal expense insurance;

(d) motor club insurance;

(e) [~~rental car-related~~] car rental related insurance;

(f) travel insurance;

(g) crop insurance;

(h) self-service storage insurance; [~~and~~]

(i) guaranteed asset protection waiver; and

[~~(i)~~] (j) another form of limited insurance that the commissioner determines by rule should be designated a form of limited line insurance.

[~~(104)~~] (106) "Limited lines authority" includes:

(a) the lines of insurance listed in Subsection [~~(103)~~] (105); and

(b) a customer service representative.

[~~(105)~~] (107) "Limited lines producer" means a person who sells, solicits, or negotiates limited lines insurance.

[~~(106)~~] (108) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

(i) in a setting other than an acute care unit of a hospital;

(ii) for not less than 12 consecutive months for a covered person on the basis of:

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

(iii) for one or more necessary or medically necessary services that are:

(A) diagnostic;

(B) preventative;

(C) therapeutic;

(D) rehabilitative;

(E) maintenance; or

(F) personal care; and

(iv) that may be issued by:

(A) an insurer;

(B) a fraternal benefit society;

(C) (I) a nonprofit health hospital; and

(II) a medical service corporation;

(D) a prepaid health plan;

(E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections [~~(106)~~] (108)(a)(iv)(A) through (E) to the extent that the entity is otherwise authorized to issue life or health care insurance.

(b) "Long-term care insurance" includes:

(i) any of the following that provide directly or supplement long-term care insurance:

(A) a group or individual annuity or rider; or

(B) a life insurance policy or rider;

(ii) a policy or rider that provides for payment of benefits on the basis of:

(A) cognitive impairment; or

(B) functional capacity; or

(iii) a qualified long-term care insurance contract.

(c) "Long-term care insurance" does not include:

(i) a policy that is offered primarily to provide basic Medicare supplement coverage;

(ii) basic hospital expense coverage;

(iii) basic medical/surgical expense coverage;

(iv) hospital confinement indemnity coverage;

(v) major medical expense coverage;

(vi) income replacement or related asset-protection coverage;

(vii) accident only coverage;

(viii) coverage for a specified:

(A) disease; or

(B) accident;

(ix) limited benefit health coverage; or

(x) a life insurance policy that accelerates the death benefit to provide the option of a lump sum payment:

(A) if the following are not conditioned on the receipt of long-term care:

(I) benefits; or

(II) eligibility; and

(B) the coverage is for one or more the following qualifying events:

(I) terminal illness;

(II) medical conditions requiring extraordinary medical intervention; or

(III) permanent institutional confinement.

[~~(107)~~] (109) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of a medical service other than the practice and provision of a dental service.

[~~(108)~~] (110) "Member" means a person having membership rights in an insurance corporation.

[~~(109)~~] (111) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

[~~(110)~~] (112) "Mortgage accident and health insurance" means insurance offered in connection with an extension of credit that provides indemnity for payments coming due on a mortgage while the debtor is disabled.

[~~(111)~~] (113) "Mortgage guaranty insurance" means surety insurance under which a mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

[~~(112)~~] (114) "Mortgage life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays if the debtor dies.

[~~(113)~~] (115) "Motor club" means a person:

(a) licensed under:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

(b) that promises for an advance consideration to provide for a stated period of time one or more:

(i) legal services under Subsection 31A-11-102(1)(b);

(ii) bail services under Subsection 31A-11-102(1)(c); or

(iii) (A) trip reimbursement;

(B) towing services;

(C) emergency road services;

(D) stolen automobile services;

(E) a combination of the services listed in Subsections [~~(113)~~] (115)(b)(iii)(A) through (D); or

(F) other services given in Subsections 31A-11-102(1)(b) through (f).

[~~(114)~~] (116) "Mutual" means a mutual insurance corporation.

[~~(115)~~] (117) "Network plan" means health care insurance:

(a) that is issued by an insurer; and

(b) under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the insurer, including the financing and delivery of an item paid for as medical care.

[~~(116)~~] (118) "Nonparticipating" means a plan of insurance under which the insured is not entitled to

receive a dividend representing a share of the surplus of the insurer.

[~~(117)~~] (119) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

[~~(118)~~] (120) "Order" means an order of the commissioner.

[~~(119)~~] (121) "Outline of coverage" means a summary that explains an accident and health insurance policy.

[~~(120)~~] (122) "Participating" means a plan of insurance under which the insured is entitled to receive a dividend representing a share of the surplus of the insurer.

[~~(121)~~] (123) "Participation," as used in a health benefit plan, means a requirement relating to the minimum percentage of eligible employees that must be enrolled in relation to the total number of eligible employees of an employer reduced by each eligible employee who voluntarily declines coverage under the plan because the employee:

(a) has other group health care insurance coverage; or

(b) receives:

(i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965; or

(ii) another government health benefit.

[~~(122)~~] (124) "Person" includes:

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

(f) a trust;

(g) a limited liability company;

(h) a reciprocal;

(i) a syndicate; or

(j) another similar entity or combination of entities acting in concert.

[~~(123)~~] (125) "Personal lines insurance" means property and casualty insurance coverage sold for primarily noncommercial purposes to:

(a) an individual; or

(b) a family.

[~~(124)~~] (126) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

[~~(125)~~] (127) "Plan year" means:

(a) the year that is designated as the plan year in:

(i) the plan document of a group health plan; or

(ii) a summary plan description of a group health plan;

(b) if the plan document or summary plan description does not designate a plan year or there is no plan document or summary plan description:

(i) the year used to determine deductibles or limits;

(ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis; or

(iii) the employer's taxable year if:

(A) the plan does not impose deductibles or limits on a yearly basis; and

(B) (I) the plan is not insured; or

(II) the insurance policy is not renewed on an annual basis; or

(c) in a case not described in Subsection [~~(125)~~] (127)(a) or (b), the calendar year.

[~~(126)~~] (128) (a) "Policy" means a document, including an attached endorsement or application that:

(i) purports to be an enforceable contract; and

(ii) memorializes in writing some or all of the terms of an insurance contract.

(b) "Policy" includes a service contract issued by:

(i) a motor club under Chapter 11, Motor Clubs;

(ii) a service contract provided under Chapter 6a, Service Contracts; and

(iii) a corporation licensed under:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(c) "Policy" does not include:

(i) a certificate under a group insurance contract; or

(ii) a document that does not purport to have legal effect.

[~~(127)~~] (129) "Policyholder" means a person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

[~~(128)~~] (130) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

[~~(129)~~] (131) "Policy summary" means a synopsis describing the elements of a life insurance policy.

[~~(130)~~] (132) "Preexisting condition," with respect to a health benefit plan:

(a) means a condition that was present before the effective date of coverage, whether or not medical advice, diagnosis, care, or treatment was recommended or received before that day; and

(b) does not include a condition indicated by genetic information unless an actual diagnosis of the condition by a physician has been made.

[~~(131)~~] (133) (a) "Premium" means the monetary consideration for an insurance policy.

(b) "Premium" includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

(c) (i) "Premium" does not include consideration paid to a third party administrator for the third party administrator's services.

(ii) "Premium" includes an amount paid by a third party administrator to an insurer for insurance on the risks administered by the third party administrator.

[~~(132)~~] (134) "Principal officers" for a corporation means the officers designated under Subsection 31A-5-203(3).

[~~(133)~~] (135) "Proceeding" includes an action or special statutory proceeding.

[~~(134)~~] (136) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of a professional service.

[~~(135)~~] (137) (a) Except as provided in Subsection [~~(135)~~] (137)(b), "property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property:

(i) from all hazards or causes; and

(ii) against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages.

(b) "Property insurance" does not include:

(i) inland marine insurance; and

(ii) ocean marine insurance.

[~~(136)~~] (138) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means:

(a) an individual or group insurance contract that meets the requirements of Section 7702B(b), Internal Revenue Code; or

(b) the portion of a life insurance contract that provides long-term care insurance:

(i) (A) by rider; or

(B) as a part of the contract; and

(ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue Code.

[~~(137)~~] (139) "Qualified United States financial institution" means an institution that:

(a) is:

(i) organized under the laws of the United States or any state; or

(ii) in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(b) is regulated, supervised, and examined by a United States federal or state authority having regulatory authority over a bank or trust company; and

(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of a financial institution whose letters of credit will be acceptable to the commissioner as determined by:

(i) the commissioner by rule; or

(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.

[~~(138)~~] (140) (a) "Rate" means:

(i) the cost of a given unit of insurance; or

(ii) for property or casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before the application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

[~~(139)~~] (141) (a) Except as provided in Subsection [~~(139)~~] (141)(b), "rate service organization" means a person who assists an insurer in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) an individual serving as an actuarial or legal consultant.

[~~(140)~~] (142) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

(d) a rating formula that describes steps, policies, and procedures for determining initial and renewal policy premiums.

[~~(141)~~] (143) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the post mark date, if delivered by mail;

(c) the delivery service's post mark or pickup date, if delivered by a delivery service;

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

[~~(142)~~] (144) "Reciprocal" or "interinsurance exchange" means an unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of the persons; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

[~~(143)~~] (145) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

(a) the insurer transferring the risk as the "ceding insurer"; and

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

[~~(144)~~] (146) "Reinsurer" means a person licensed in this state as an insurer with the authority to assume reinsurance.

[~~(145)~~] (147) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

[~~(146)~~] (148) (a) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract.

(b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a liability assumed under a reinsurance contract.

[~~(147)~~] (149) "Rider" means an endorsement to:

(a) an insurance policy; or

(b) an insurance certificate.

[~~(148)~~] (150) (a) "Security" means a:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in a profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections [~~(148)~~] (150)(a)(i) through (xiv); or

(xvi) another interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any of the following under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period:

(A) insurance;

(B) an endowment policy; or

(C) an annuity contract; or

(ii) a burial certificate or burial contract.

[~~(149)~~] (151) "Secondary medical condition" means a complication related to an exclusion from coverage in accident and health insurance.

[~~(150)~~] (152) (a) "Self-insurance" means an arrangement under which a person provides for spreading its own risks by a systematic plan.

[~~(a)~~] (b) Except as provided in this Subsection [~~(150)~~] (152), "self-insurance" does not include an arrangement under which a number of persons spread their risks among themselves.

[~~(b)~~] (c) "Self-insurance" includes:

(i) an arrangement by which a governmental entity undertakes to indemnify an employee for liability arising out of the employee's employment; and

(ii) an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk that is related to the relationship or employment.

[~~(c)~~] (d) "Self-insurance" does not include an arrangement with an independent contractor.

[~~(151)~~] (153) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

[~~(152)~~] (154) "Short-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance, but that provides coverage for less than 12 consecutive months for each covered person.

[~~(153)~~] (155) "Significant break in coverage" means a period of 63 consecutive days during each of which an individual does not have creditable coverage.

[~~(154)~~] (156) "Small employer," in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least two employees but not more than 50 eligible employees on each business day during the preceding calendar year; and

(b) employs at least two employees on the first day of the plan year.

[~~(155)~~] (157) "Special enrollment period," in connection with a health benefit plan, has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~].

[~~(156)~~] (158) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

[~~(157)~~] (159) Subject to Subsection [~~(83)~~] (85)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from the failure of a principal to pay or perform the principal's obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

[~~(158)~~] (160) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by the insurer as permanent.

(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus.

(iii) Except for assessable mutuals, the minimum permanent surplus requirement is the same as the minimum required capital requirement that applies to stock insurers.

(c) "Excess surplus" means:

(i) for a life insurer, accident and health insurer, health organization, or property and casualty insurer as defined in Section 31A-17-601, the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 2.5; and

(II) the sum of the insurer's or health organization's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 3.0; and

(II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

(ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

[~~(159)~~] (161) "Third party administrator" or "administrator" means a person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering a:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under [~~Chapter 5, 7, 8, 9, or 14~~] the following, but only for a line of insurance for which the insurer holds a license in this state[~~; or~~]:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

(iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) Chapter 9, Insurance Fraternals; or

(v) Chapter 14, Foreign Insurers; or

(e) a person:

(i) licensed or exempt from licensing under:

(A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or

(B) Chapter 26, Insurance Adjusters; and

(ii) whose activities are limited to those authorized under the license the person holds or for which the person is exempt.

[~~(160)~~] (162) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner of real or personal property or the holder of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

[~~(161)~~] (163) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) another item provided by the RBC instructions, as RBC instructions is defined in Section 31A-17-601.

[~~(162)~~] (164) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

[~~(163)~~] (165) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state; or

(ii) transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer:

(i) holding a valid certificate of authority to do an insurance business in this state; and

(ii) transacting business as authorized by a valid certificate.

[~~(164)~~] (166) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

[~~(165)~~] (167) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle comprehensive or vehicle physical damage coverage under Subsection [~~(135)~~] (137).

[~~(166)~~] (168) "Voting security" means a security with voting rights, and includes a security convertible into a security with a voting right associated with the security.

[~~(167)~~] (169) "Waiting period" for a health benefit plan means the period that must pass before coverage for an individual, who is otherwise eligible to enroll under the terms of the health benefit plan, can become effective.

[~~(168)~~] (170) "Workers' compensation insurance" means:

(a) insurance for indemnification of an employer against liability for compensation based on:

(i) a compensable accidental injury; and

(ii) occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with workers' compensation insurance; and

(c) insurance assuring to a person entitled to workers' compensation benefits the compensation provided by law.

Section 2. Section 31A-2-208 is amended to read:

31A-2-208. Publications.

(1) The commissioner may prepare and distribute books, pamphlets, and other publications relating to insurance. Except as otherwise provided under this title, the [~~insurance~~] commissioner may charge the cost of producing [~~the publications~~] a publication to those desiring to receive [~~them~~] the publication. Money collected from subscription fees charged for [~~these publications~~] a publication shall be deposited [~~as dedicated credits to be used solely for the production and mailing costs of the publications~~] into the Relative Value Study Restricted Account, created in Section 59-9-105, to be used as provided in Section 59-9-105.

(2) The commissioner shall have the annual report required in Subsection 31A-2-207(5) printed:

(a) in a form determined by [~~him~~] the commissioner; and

(b) in sufficient numbers to meet [~~all~~] requests for copies.

(3) The commissioner shall publish in [~~his~~] the annual report required in Subsection 31A-2-207(5) an up-to-date chart and explanation of the organization of [~~his~~] the commissioner's office, making clear the allocation of responsibility and authority among the staff. This [~~document~~] up-to-date chart and explanation shall be printed in sufficient numbers [~~sufficient~~] to meet [~~all~~] requests for copies.

Section 3. Section 31A-2-212 is amended to read:

31A-2-212. Miscellaneous duties.

(1) Upon issuance of [~~any~~] an order limiting, suspending, or revoking [~~an insurer's~~] a person's authority to do business in Utah, and [~~on institution of any proceedings~~] when the commissioner begins a proceeding against [~~the~~] an insurer under Chapter 27a, Insurer Receivership Act, the commissioner:

(a) shall notify by mail [~~all agents~~] the producers of the person or insurer of whom the commissioner has record; and

(b) may publish notice of the order or proceeding in any manner the commissioner considers necessary to protect the rights of the public.

(2) When required for evidence in [~~any~~] a legal proceeding, the commissioner shall furnish a certificate of [~~the~~] authority of [~~any~~] a licensee to transact [~~insurance~~] the business of insurance in Utah on any particular date. The court or other officer shall receive the certificate of authority in lieu of the commissioner's testimony.

(3) (a) On the request of [~~any~~] an insurer authorized to do a surety business, the commissioner shall furnish a copy of the insurer's certificate of authority to [~~any~~] a designated public officer in this state who requires that certificate of authority before accepting a bond.

(b) The public officer described in Subsection (3)(a) shall file the certificate of authority furnished under Subsection (3)(a).

(c) After a certified copy of a certificate of authority [~~has been~~] is furnished to a public officer, it is not necessary, while the certificate of authority remains effective, to attach a copy of it to any instrument of suretyship filed with that public officer.

(d) Whenever the commissioner revokes the certificate of authority or [~~starts proceedings~~] begins a proceeding under Chapter 27a, Insurer Receivership Act, against [~~any~~] an insurer authorized to do a surety business, the commissioner shall immediately give notice of that action to each public officer who [~~was~~] is sent a certified copy under this Subsection (3).

(4) (a) The commissioner shall immediately notify every judge and clerk of [~~all~~] the courts of record in the state when:

(i) an authorized insurer doing a surety business:

(A) files a petition for receivership; or

(B) is in receivership; or

(ii) the commissioner has reason to believe that the authorized insurer doing surety business:

(A) is in financial difficulty; or

(B) has unreasonably failed to carry out any of its contracts.

(b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the judges and clerks to notify and require [~~every~~] a person that [~~has filed~~] files with the court a bond on which the authorized insurer doing surety business is surety[~~,~~] to immediately file a new bond with a new surety.

(5) The commissioner shall require an insurer that issues, sells, renews, or offers health insurance coverage in this state to comply with the Health Insurance Portability and Accountability Act[~~, P.L. 104-191, pursuant to 110 Stat. 1968, Sec. 2722~~].

Section 4. Section 31A-3-101 is amended to read:

31A-3-101. General finance provisions.

[~~(1) The department's expenses shall be paid from the General Fund.~~] Department expenditures shall conform to the Legislature's appropriation adopted under Title 63J, Chapter 1, Budgetary Procedures Act.

[~~(2) Except as provided in Section 31A-2-206, or as otherwise specifically provided in this title, all money collected by the commissioner shall be deposited without deduction in the General Fund.~~]

Section 5. Section 31A-3-103 is amended to read:

31A-3-103. Fees.

(1) For purposes of this section, "services" means functions that are reasonable and necessary to enable the commissioner to perform the duties imposed by this title including:

(a) issuing or renewing a license or certificate of authority;

(b) filing a policy form;

(c) reporting a producer appointment or termination; and

(d) filing an annual statement.

(2) Except as otherwise provided by this title:

(a) the commissioner may set and collect a fee for services provided by the commissioner;

(b) a fee related to the renewal of a license may be imposed no more frequently than once each year; and

(c) a fee charged by the commissioner shall be set in accordance with Section 63J-1-504.

[~~(3) Except as otherwise provided in this title, a fee established pursuant to this section shall be deposited into the General Fund for appropriation by the Legislature.~~]

[~~(4)~~] (3) (a) The commissioner shall publish a schedule of fees established pursuant to this section.

(b) The commissioner shall, by rule, establish the deadlines for payment of a fee established pursuant to this section.

(4) (a) Beginning July 1, 2011, there is created in the General Fund a restricted account known as the "Insurance Department Restricted Account."

(b) Except as provided in Subsection (4)(c), the Insurance Department Restricted Account shall consist of:

(i) fees authorized by this section; and

(ii) other money received by the department, including:

(A) reimbursements for examination costs incurred by the department; and

(B) forfeitures collected under this title.

(c) The department shall deposit money it receives that is subject to a restricted account or enterprise fund created by this title into the restricted account or enterprise fund in accordance with the statute creating the restricted account or enterprise fund, and the department may not deposit the money into the Insurance Department Restricted Account.

(d) Subject to appropriation by the Legislature, the department may expend money in the Insurance Department Restricted Account to fund the operations of the department.

(e) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any money deposited into the Insurance Department Restricted Account under Subsection (4)(b) that exceeds the legislative appropriations from the Insurance Department Restricted Account for that year.

Section 6. Section 31A-3-304 is amended to read:

31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance Restricted Account.

(1) (a) A captive insurance company shall pay an annual fee imposed under this section to obtain or renew a certificate of authority.

(b) The commissioner shall:

(i) determine the annual fee pursuant to Section 31A-3-103; and

(ii) consider whether the annual fee is competitive with fees imposed by other states on captive insurance companies.

(2) A captive insurance company that fails to pay the fee required by this section is subject to the relevant sanctions of this title.

(3) (a) Except as provided in Subsection (3)[~~(b)~~](d) and notwithstanding Title 59, Chapter 9, Taxation of Admitted Insurers, [~~the fee provided for in this section constitutes the sole tax or fee~~] the following constitute the sole taxes, fees, or charges under the laws of this state that may be [~~otherwise~~] levied or assessed on a captive insurance company[~~, and no other occupation tax or other tax or fee may be levied or collected from a captive insurance company by the state or a county, city, or municipality within this state.~~]:

[~~(b) Notwithstanding Subsection (3)(a), a~~]

(i) a fee under this section;

(ii) a fee under Chapter 37, Captive Insurance Companies Act; and

(iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

(b) The state or a county, city, or town within the state may not levy or collect an occupation tax or other tax, fee, or charge not described in Subsections (3)(a)(i) through (iii) against a captive insurance company.

(c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115 against a captive insurance company.

(d) A captive insurance company is subject to real and personal property taxes.

(4) A captive insurance company shall pay the fee imposed by this section to the commissioner by [~~March 31~~] June 20 of each year.

(5) (a) Money received pursuant to [~~Subsection (2)~~] a fee described in Subsection (3)(a) shall be deposited into the Captive Insurance Restricted Account.

(b) There is created in the General Fund a restricted account known as the "Captive Insurance Restricted Account."

(c) The Captive Insurance Restricted Account shall consist of the fees [~~imposed by the commissioner in accordance with this section~~] described in Subsection (3)(a).

(d) The commissioner shall administer the Captive Insurance Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Captive Insurance Restricted Account to:

(i) administer and enforce:

(A) Chapter 37, Captive Insurance Companies Act; and

(B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

(ii) promote the captive insurance industry in Utah.

(e) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of [~~$600,000~~] $950,000 shall be treated as free revenue in the General Fund.

Section 7. Section 31A-14-211 is amended to read:

31A-14-211. Restrictions on foreign title insurers.

(1) An authorized foreign title insurer may not insure property in this state except:

(a) through a title insurance producer who is a resident in Utah; or

(b) through a bona fide [~~branch~~] office in Utah:

(i) that is under the direction and control of the authorized foreign title insurer [~~that pays all~~];

(ii) for which the authorized foreign title insurer pays the expenses [~~of the branch office~~], including compensation of [~~all~~] the employees[~~; or~~] of the bona fide office;

(iii) at which a person may request information about title services related to a real estate transaction for which the person is a party;

(iv) at which a person may deliver written communications to the authorized foreign title insurer as required by the real estate transaction for which the person is a party; and

(v) at which a person may deliver escrow money related to a real estate transaction for which the person is a party.

[~~(c) through a subsidiary title insurer authorized to do business in Utah.~~]

(2) This section does not apply to reinsurance.

Section 8. Section 31A-22-607 is amended to read:

31A-22-607. Grace period.

(1) [~~Every~~] (a) An individual or franchise accident and health insurance policy shall contain one or more clauses providing for a grace period for premium payment only of:

(i) at least 15 days for a weekly or monthly premium [~~policies~~] policy; and

(ii) 30 days for [~~all other policies~~] a policy that is not a weekly or monthly premium policy, for each premium after the first premium payment. [~~A carrier~~]

(b) An insurer may elect to include a grace period that is longer than 15 days for a weekly or monthly [~~policies~~] policy.

[~~(a) The~~] (c) An individual or franchise accident and health insurance policy is not in force during [~~the~~] a grace period.

[~~(b) If the~~] (d) If an insurer receives payment before [~~the~~] a grace period expires, the individual or franchise accident and health insurance policy continues in force with no gap in coverage.

[~~(c) If the~~] (e) If an insurer does not receive payment before [~~the~~] a grace period expires, the [~~policy shall be~~] individual or franchise accident and health insurance policy is terminated as of the last date for which the premium [~~was~~] is paid in full.

[~~(d)~~] (f) A grace period is not required if the policyholder has requested that the individual or franchise accident and health insurance policy be discontinued.

(2) [~~Every~~] (a) A group or blanket accident and health insurance policy shall provide for a grace period of at least 30 days, unless the policyholder gives written notice of discontinuance [~~prior to~~] before the date of discontinuance, in accordance with the policy terms. [~~In group or blanket policies, the~~]

(b) A group or blanket accident and health insurance policy is in force during a grace period.

(c) If an insurer does not receive payment before a grace period expires, the group or blanket accident and health insurance policy is terminated as of the last day of the grace period.

(d) A group or blanket accident and health insurance policy may provide for payment of a pro rata premium for the period the group or blanket accident and health insurance policy is in effect during [~~the~~] a grace period under this Subsection (2).

(3) If [~~the~~] an insurer has not guaranteed the insured a right to renew an accident and health insurance policy, [~~any~~] a grace period beyond the expiration or anniversary date may, if provided in the accident and health insurance policy, be cut off by compliance with the notice provision under Subsection 31A-21-303(4)(b).

Section 9. Section 31A-22-610.6 is amended to read:

31A-22-610.6. Special enrollment for individuals receiving premium assistance.

(1) As used in this section:

(a) "Premium assistance" means assistance under Title 26, Chapter 18, Medical Assistance Act, in the payment of premium.

(b) "Qualified beneficiary" means an individual who is approved to receive premium assistance.

(2) Subject to the other provisions in this section, an individual may enroll under this section at a time outside of an employer health benefit plan open enrollment period, regardless of previously waiving coverage, if the individual is:

(a) a qualified beneficiary who is eligible for coverage as an employee under the employer health benefit plan; or

(b) a dependent of the qualified beneficiary who is eligible for coverage under the employer health benefit plan.

(3) To be eligible to enroll outside of an open enrollment period, an individual described in Subsection (2) shall enroll in the employer health benefit plan by no later than 30 days from the day on which the qualified beneficiary receives initial written notification, after July 1, 2008, that the qualified beneficiary is eligible to receive premium assistance.

(4) An individual described in Subsection (2) may enroll under this section only in an employer health benefit plan that is available at the time of enrollment to similarly situated eligible employees or dependents of eligible employees.

(5) Coverage under an employer health benefit plan for an individual described in Subsection (2) may begin as soon as the first day of the month immediately following enrollment of the individual in accordance with this section.

(6) This section does not modify any requirement related to premiums that applies under an employer health benefit plan to a similarly situated eligible employee or dependent of an eligible employee under the employer health benefit plan.

(7) An employer health benefit plan may require an individual described in Subsection (2) to satisfy a preexisting condition waiting period that:

(a) is allowed under the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~]; and

(b) is not longer than 12 months.

Section 10. Section 31A-22-614.5 is amended to read:

31A-22-614.5. Uniform claims processing -- Electronic exchange of health information.

(1) (a) Except as provided in Subsection (1)(c), all insurers offering health insurance shall use a uniform claim form and uniform billing and claim codes.

(b) Beginning January 1, 2011, all health benefit plans, and dental and vision plans, shall provide for the electronic exchange of uniform:

(i) eligibility and coverage information; and

(ii) coordination of benefits information.

(c) For purposes of Subsection (1)(a), "health insurance" does not include a policy or certificate that provides benefits solely for:

(i) income replacement; or

(ii) long-term care.

(2) (a) The uniform electronic standards and information required in Subsection (1) shall be adopted and approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) When adopting rules under this section the commissioner:

(i) shall:

(A) consult with national and state organizations involved with the standardized exchange of health data, and the electronic exchange of health data, to develop the standards for the use and electronic exchange of uniform:

(I) claim forms;

(II) billing and claim codes;

(III) insurance eligibility and coverage information; and

(IV) coordination of benefits information; and

(B) meet federal mandatory minimum standards following the adoption of national requirements for transaction and data elements in the federal Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~];

(ii) may not require an insurer or administrator to use a specific software product or vendor; and

(iii) may require an insurer who participates in the all payer database created under Section 26-33a-106.1 to allow data regarding demographic and insurance coverage information to be electronically shared with the state's designated secure health information master person index to be used:

(A) in compliance with data security standards established by:

(I) the federal Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~]; and

(II) the electronic commerce agreements established in a business associate agreement; and

(B) for the purpose of coordination of health benefit plans.

(3) (a) The commissioner shall coordinate the administrative rules adopted under the provisions of this section with the administrative rules adopted by the Department of Health for the implementation of the standards for the electronic exchange of clinical health information under Section 26-1-37. The department shall establish procedures for developing the rules adopted under this section, which ensure that the Department of Health is given the opportunity to comment on proposed rules.

(b) (i) The commissioner may provide information to health care providers regarding resources available to a health care provider to verify whether

a health care provider's practice management software system meets the uniform electronic standards for data exchange required by this section.

(ii) The commissioner may provide the information described in Subsection (3)(b)(i) by partnering with:

(A) a not-for-profit, broad based coalition of state health care insurers and health care providers who are involved in the electronic exchange of the data required by this section; or

(B) some other person that the commissioner determines is appropriate to provide the information described in Subsection (3)(b)(i).

(c) The commissioner shall regulate any fees charged by insurers to the providers for:

(i) uniform claim forms;

(ii) electronic billing; or

(iii) the electronic exchange of clinical health information permitted by Section 26-1-37.

Section 11. Section 31A-22-618.5 is amended to read:

31A-22-618.5. Health benefit plan offerings.

(1) The purpose of this section is to increase the range of health benefit plans available in the small group, small employer group, large group, and individual insurance markets.

(2) A health maintenance organization that is subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) shall offer to potential purchasers at least one health benefit plan that is subject to the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans; and

(b) may offer to a potential purchaser one or more health benefit plans that:

(i) are not subject to one or more of the following:

(A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

(B) the limitation on point of service products in Subsections 31A-8-408(3) through (6);

(C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in Section 31A-8-101; or

(D) coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate enacted after January 1, 2009; and

(ii) when offering a health plan under this section, provide coverage for an emergency medical condition as required by Section 31A-22-627 as follows:

(A) within the organization's service area, covered services shall include health care services from non-affiliated providers when medically necessary to stabilize an emergency medical condition; and

(B) outside the organization's service area, covered services shall include medically necessary health care services for the treatment of an emergency medical condition that are immediately required while the enrollee is outside the geographic limits of the organization's service area.

(3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that groups providers into the following reimbursement levels:

(i) tier one contracted providers;

(ii) tier two contracted providers who the insurer must reimburse at least 75% of tier one providers; and

(iii) one or more tiers of non-contracted providers; [~~and~~]

(b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is not subject to Section 31A-22-618;

(c) beginning July 1, 2012, may offer [~~products under Subsection (3)(a)~~] health benefit plans that:

(i) are not subject to Subsection 31A-22-617(2); and

(ii) are subject to the reimbursement requirements in Section 31A-8-501;

(d) when offering a health plan under this Subsection (3), shall provide coverage of emergency care services as required by Section 31A-22-627 by providing coverage at a reimbursement level of at least 75% of [~~tier one providers~~] the health benefit plan's highest contracted provider category; and

(e) are not subject to coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that an insurer offers one plan that covers a mandate enacted after January 1, 2009.

(4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under Subsection (2)(b).

(5) (a) Any difference in price between a health benefit plan offered under Subsections (2)(a) and (b) shall be based on actuarially sound data.

(b) Any difference in price between a health benefit plan offered under Subsections (3)(a) and (b) shall be based on actuarially sound data.

(6) Nothing in this section limits the number of health benefit plans that an insurer may offer.

Section 12. Section 31A-22-625 is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan that does

not impose a lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, before reaching a maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on:

(A) episodic limits;

(B) inpatient or outpatient service limits; or

(C) maximum out-of-pocket limits.

(c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(d) (i) "Mental health condition" means a condition or disorder involving mental illness that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) a marital or family problem;

(B) a social, occupational, religious, or other social maladjustment;

(C) a conduct disorder;

(D) a chronic adjustment disorder;

(E) a psychosexual disorder;

(F) a chronic organic brain syndrome;

(G) a personality disorder;

(H) a specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. [~~300gg-5~~] 300gg-26, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition must be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility:

(A) licensed or otherwise authorized to provide mental health services pursuant to:

(I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

(B) that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of insurance policies that include:

(i) no mental health coverage;

(ii) 50/50 mental health coverage;

(iii) catastrophic mental health coverage; and

(iv) coverage that exceeds the minimum requirements of this section.

(7) This section may not be construed as discouraging or otherwise preventing an insurer from providing mental health coverage in connection with an individual insurance policy.

(8) This section shall be repealed in accordance with Section 63I-1-231.

Section 13. Section 31A-22-701 is amended to read:

31A-22-701. Groups eligible for group or blanket insurance.

(1) As used in this section, "association group" means a lawfully formed association of individuals or business entities that:

(a) purchases insurance on a group basis on behalf of members; and

(b) is formed and maintained in good faith for purposes other than obtaining insurance.

(2) A group [~~or blanket~~] accident and health insurance policy may be issued to:

(a) a group:

(i) to which a group life insurance policy may be issued under Sections 31A-22-502, 31A-22-503, 31A-22-504, 31A-22-506, 31A-22-507, and 31A-22-509; and

(ii) that is formed [~~for a reason other than the purchase of insurance~~] and maintained in good faith for a purpose other than obtaining insurance;

(b) an association group that:

(i) has been actively in existence for at least five years;

(ii) has a constitution and bylaws;

(iii) is formed and maintained in good faith for purposes other than obtaining insurance;

(iv) does not condition membership in the association group on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(v) makes accident and health insurance coverage offered through the association group available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member; [~~and~~]

(vi) does not make accident and health insurance coverage offered through the association group available other than in connection with a member of the association group; [~~or~~] and

(vii) is actuarially sound; or

(c) a group specifically authorized by the commissioner under Section 31A-22-509, upon a finding that:

(i) authorization is not contrary to the public interest;

(ii) the [~~proposed~~] group is actuarially sound;

(iii) formation of the proposed group may result in economies of scale in acquisition, administrative, marketing, and brokerage costs;

(iv) the insurance policy, insurance certificate, or other indicia of coverage that will be offered to the proposed group is substantially equivalent to insurance policies that are otherwise available to similar groups;

(v) the group would not present hazards of adverse selection; [~~and~~]

(vi) the premiums for the insurance policy and any contributions by or on behalf of the insured persons are reasonable in relation to the benefits provided[~~.~~]; and

(vii) the group is formed and maintained in good faith for a purpose other than obtaining insurance.

(3) A blanket accident and health insurance policy:

(a) covers a defined class of persons;

(b) may not be offered or underwritten on an individual basis;

(c) shall cover only a group that is:

(i) actuarially sound; and

(ii) formed and maintained in good faith for a purpose other than obtaining insurance; and

(d) may [~~also~~] be issued only to:

[~~(a)~~] (i) a common carrier or an operator, owner, or lessee of a means of transportation, as policyholder, covering persons who may become passengers as defined by reference to [~~their~~] the person's travel status;

[~~(b)~~] (ii) an employer, as policyholder, covering any group of employees, dependents, or guests, as defined by reference to specified hazards incident to any activities of the policyholder;

[~~(c)~~] (iii) an institution of learning, including a school district, a school jurisdictional [~~units~~] unit, or the head, principal, or governing board of [~~any of those units~~] a school jurisdictional unit, as policyholder, covering students, teachers, or employees;

[~~(d)~~] (iv) a religious, charitable, recreational, educational, or civic organization, or branch of one of those organizations, as policyholder, covering [~~any~~] a group of members or participants as defined by reference to specified hazards incident to the activities sponsored or supervised by the policyholder;

[~~(e)~~] (v) a sports team, camp, or sponsor of [~~the~~] a sports team or camp, as policyholder, covering members, campers, employees, officials, or supervisors;

[~~(f)~~] (vi) a volunteer fire department, first aid, civil defense, or other similar volunteer organization, as policyholder, covering [~~any~~] a group of members or participants as defined by reference to specified hazards incident to activities sponsored, supervised, or participated in by the policyholder;

[~~(g)~~] (vii) a newspaper or other publisher, as policyholder, covering its carriers;

[~~(h)~~] (viii) an association, including a labor union, [~~which~~] that has a constitution and bylaws and [~~which has been~~] that is organized in good faith for purposes other than that of obtaining insurance, as policyholder, covering [~~any~~] a group of members or participants as defined by reference to specified hazards incident to the activities or operations sponsored or supervised by the policyholder; and

[~~(i) a health insurance purchasing association, as defined in Section 31A-34-103, organized and controlled solely by participating employers; and~~]

[~~(j)~~] (ix) any other class of risks that, in the judgment of the commissioner, may be properly eligible for blanket accident and health insurance.

(4) The judgment of the commissioner may be exercised on the basis of:

(a) individual risks;

(b) a class of risks; or

(c) both Subsections (4)(a) and (b).

Section 14. Section 31A-22-716 is amended to read:

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

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

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

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

Section 15. Section 31A-22-721 is amended to read:

31A-22-721. A health benefit plan for a plan sponsor -- Discontinuance and nonrenewal.

(1) Except as otherwise provided in this section, a health benefit plan for a plan sponsor is renewable and continues in force:

(a) with respect to all eligible employees and dependents; and

(b) at the option of the plan sponsor.

(2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed:

(a) for a network plan, if:

(i) there is no longer any enrollee under the group health plan who lives, resides, or works in:

(A) the service area of the insurer; or

(B) the area for which the insurer is authorized to do business; and

(ii) in the case of the small employer market, the insurer applies the same criteria the insurer would apply in denying enrollment in the plan under Subsection 31A-30-108(7); or

(b) for coverage made available in the small or large employer market only through an association, if:

(i) the employer's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(3) A health benefit plan for a plan sponsor may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the plan sponsor fails to pay premiums or contributions in accordance with the terms of the contract;

(c) the plan sponsor:

(i) performs an act or practice that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit product delivered or issued for delivery in this state;

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, and dependent of a plan sponsor or employee; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner; and

(II) at least three working days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of plan sponsors or employees;

(C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase any other health benefit products currently being offered:

(I) by the insurer in the market; or

(II) in the case of a large employer, any other health benefit plan currently being offered in that market; and

(D) in exercising the option to discontinue that product and in offering the option of coverage in this section, the insurer acts uniformly without regard to:

(I) the claims experience of a plan sponsor;

(II) any health status-related factor relating to any covered participant or beneficiary; or

(III) any health status-related factor relating to a new participant or beneficiary who may become eligible for coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans:

(A) in the small employer market; or

(B) the large employer market; or

(C) both the small and large employer markets; and

(ii) (A) provides notice of the discontinuance in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 business days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of a plan sponsor or employee;

(C) discontinues and nonrenews all plans issued or delivered for issuance in the market; and

(D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

(4) A large employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's:

(i) minimum participation requirements; or

(ii) employer contribution requirements.

(5) A small employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's employer contribution requirements.

(6) A small employer health benefit plan may be nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's minimum participation requirements.

(7) (a) Except as provided in Subsection (7)(d), an eligible employee may be discontinued if after issuance of coverage the eligible employee:

(i) engages in an act or practice that constitutes fraud in connection with the coverage; or

(ii) makes an intentional misrepresentation of material fact in connection with the coverage.

(b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:

(i) 12 months after the date of discontinuance; and

(ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies to reenroll.

(c) At the time the eligible employee's coverage is discontinued under Subsection (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is discontinued.

(d) An eligible employee may not be discontinued under this Subsection (7) because of a fraud or misrepresentation that relates to health status.

(8) (a) Except as provided in Subsection (8)(b), an insurer that elects to discontinue offering a health benefit plan under Subsection (3)(e) shall be prohibited from writing new business in such market in this state for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(b) The commissioner may waive the prohibition under Subsection (8)(a) when the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(9) If an insurer is doing business in one established geographic service area of the state, this section applies only to the insurer's operations in that geographic service area.

(10) An insurer may modify a health benefit plan for a plan sponsor only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with a particular product or service.

(11) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the health benefit plan is made available by an insurer in the employer market only through:

(i) an association;

(ii) a trust; or

(iii) a discretionary group.

(12) (a) A small employer that, after purchasing a health benefit plan in the small group market, employs on average more than 50 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the small group market.

(b) A large employer that, after purchasing a health benefit plan in the large group market, employs on average less than 51 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the large group market.

(13) An insurer offering employer sponsored health benefit plans shall comply with the Health Insurance Portability and Accountability Act, [~~P.L. 104-191, 110 Stat. 1962, Sec. 2701 and 2702~~] 42 U.S.C. Sec. 300gg and 300gg-1.

Section 16. Section 31A-22-723 is amended to read:

31A-22-723. Conversion from group coverage.

(1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection (3), [~~all policies~~] a policy of accident and health insurance offered on a group basis under this title, or Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated is entitled to choose a converted individual policy in accordance with this section and Section 31A-22-724.

(2) A person who has lost group coverage may elect conversion coverage with the insurer that provided prior group coverage if the person:

(a) has been continuously covered for a period of three months by the group policy or the group's preceding policies immediately prior to termination;

(b) has exhausted either:

(i) Utah mini-COBRA coverage as required in Section 31A-22-722;

(ii) federal COBRA coverage; or

(iii) alternative coverage under Section 31A-22-724;

(c) has not acquired or is not covered under any other group coverage that covers [~~all~~] preexisting conditions, including maternity, if the coverage exists; and

(d) resides in the insurer's service area.

(3) This section does not apply if the person's prior group coverage:

(a) is a stand alone policy that only provides one of the following:

(i) catastrophic benefits;

(ii) aggregate stop loss benefits;

(iii) specific stop loss benefits;

(iv) benefits for specific diseases;

(v) accidental injuries only;

(vi) dental; or

(vii) vision;

(b) is an income replacement policy;

(c) was terminated because the insured:

(i) failed to pay any required individual contribution;

(ii) performed an act or practice that constitutes fraud in connection with the coverage; or

(iii) made intentional misrepresentation of material fact under the terms of coverage; or

(d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or 31A-30-107(2)(a).

(4) (a) The [~~employer~~] insurer shall provide written notification of the right to an individual conversion policy within 30 days of the insurer receiving notice of, the insured's termination of COBRA or Utah mini-COBRA coverage to:

(i) the terminated insured;

(ii) the ex-spouse; or

(iii) in the case of the death of the insured:

(A) the surviving spouse; and

(B) the guardian of any dependents, if different from a surviving spouse.

(b) The notification required by Subsection (4)(a) shall:

(i) be sent by first class mail;

(ii) contain the name, address, and telephone number of the insurer that will provide the conversion coverage; and

(iii) be sent to the insured's last-known address as shown on the records of the employer of:

(A) the insured;

(B) the ex-spouse; and

(C) if the policy terminates by reason of the death of the insured to:

(I) the surviving spouse; and

(II) the guardian of any dependents, if different from a surviving spouse.

(5) (a) An insurer is not required to issue a converted policy [~~which~~] that provides benefits in excess of those provided under the group policy from which conversion is made.

(b) Except as provided in Subsection (5)(c), if the conversion is made from a health benefit plan, the employee or member shall be offered[~~: (i) at least the basic benefit plan as provided in Section 31A-22-613.5 through December 31, 2009; and (ii) beginning January 1, 2010, only~~] the alternative coverage as provided in Subsection 31A-22-724(1)(a).

(c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels provided under the group policy, the conversion policy may offer benefits [~~which~~] that are substantially similar to those provided under the group policy.

(6) Written application for [~~the~~] a converted policy shall be made and the first premium paid to the insurer no later than [~~60~~] 30 days after [~~termination of the group accident and health insurance~~] the date of notice under Subsection (4)(a).

(7) [~~The~~] A converted policy shall be issued without evidence of insurability.

(8) (a) The initial premium for the converted policy for the first 12 months and subsequent renewal premiums shall be determined in accordance with premium rates applicable to age, class of risk of the person, and the type and amount of insurance provided.

(b) The initial premium for the first 12 months may not be raised based on pregnancy of a covered insured.

(c) The premium for converted policies shall be payable monthly or quarterly as required by the insurer for the policy form and plan selected, unless another mode or premium payment is mutually agreed upon.

(9) [~~The~~] A converted policy becomes effective at the time the insurance under the group policy terminates.

(10) (a) A newly issued converted policy covers the employee or the member and must also cover [~~all~~] dependents covered by the group policy at the date of termination of the group coverage.

(b) The only dependents that may be added after the policy has been issued are children and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

(c) At the option of the insurer, a separate converted policy may be issued to cover [~~any~~] a dependent.

(11) (a) To the extent [~~the~~] a group policy provided maternity benefits, [~~the~~] a conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group policy or the conversion policy until termination of a pregnancy that exists on the date of conversion if one of the following is pregnant on the date of the conversion:

(i) the insured;

(ii) a spouse of the insured; or

(iii) a dependent of the insured.

(b) [~~The requirements of this~~] This Subsection (11) [~~do~~] does not apply to a pregnancy that occurs after the date of conversion.

(12) Except as provided in this Subsection (12), a converted policy is renewable with respect to [~~all individuals or dependents~~] an individual or dependent at the option of the insured. An insured may be terminated from a converted policy for the following reasons:

(a) a dependent is no longer eligible under the converted policy;

(b) for a network plan, if the individual no longer lives, resides, or works in:

(i) the insured's service area; or

(ii) the area for which the covered carrier is authorized to do business;

(c) the individual fails to pay premiums or contributions in accordance with the terms of the converted policy, including any timeliness requirements;

(d) the individual performs an act or practice that constitutes fraud in connection with the coverage;

(e) the individual makes an intentional misrepresentation of material fact under the terms of the coverage; or

(f) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(13) Conditions pertaining to health may not be used as a basis for classification under this section.

(14) An insurer is only required to offer a conversion policy that complies with Subsection

31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1, may discontinue any other conversion policy if:

(a) the discontinued conversion policy is discontinued uniformly without regard to [~~any~~] a health related factor;

(b) [~~any affected~~] an affected individual is provided with 90 days' advanced written notice of the discontinuation of the existing conversion policy;

(c) the [~~policy holder~~] policyholder is offered the insurer's conversion policy that complies with Subsection 31A-22-724(1)(b); and

(d) the [~~policy holder~~] policyholder is not re-rated for purposes of premium calculation.

(15) This section does not apply to a blanket accident and health insurance policy issued under Section 31A-22-701.

Section 17. Section 31A-23a-102 is amended to read:

31A-23a-102. Definitions.

As used in this chapter:

(1) "Bail bond producer" means a person who:

(a) is appointed by:

(i) a surety insurer that issues bail bonds; or

(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Act;

(b) is designated to execute or countersign undertakings of bail in connection with a judicial proceeding; and

(c) receives or is promised money or other things of value for engaging in an act described in Subsection (1)(b).

(2) "Escrow" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to conduct escrow as defined in Section 31A-1-301.

(3) "Home state" means a state or territory of the United States or the District of Columbia in which an insurance producer:

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

(b) is licensed to act as an insurance producer.

(4) "Insurer" is as defined in Section 31A-1-301, except that the following persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

(a) a risk retention group as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Chapter 15, Part 2, Risk Retention Groups Act;

(b) a residual market pool;

(c) a joint underwriting authority or association; and

(d) a captive insurer.

(5) "License" is defined in Section 31A-1-301.

(6) (a) "Managing general agent" means a person that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year:

(A) with or without the authority;

(B) separately or together with an affiliate; and

(C) directly or indirectly; and

(iv) (A) adjusts or pays claims in excess of an amount determined by the commissioner; or

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular

contract of insurance concerning a substantive benefit, term, or condition of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

(8) "Reinsurance intermediary" means:

(a) a reinsurance intermediary-broker; or

(b) a reinsurance intermediary-manager.

(9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(10) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a United States manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(11) "Search" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(12) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

(13) "Solicit" means:

(a) attempting to sell insurance;

(b) asking or urging a person to apply for:

(i) a particular kind of insurance; and

(ii) insurance from a particular insurance company;

(c) advertising insurance, including advertising for the purpose of obtaining leads for the sale of insurance; or

(d) holding oneself out as being in the insurance business.

(14) "Terminate" means:

(a) the cancellation of the relationship between:

(i) an individual licensee or agency licensee and a particular insurer; or

(ii) an individual licensee and a particular agency licensee; or

(b) the termination of:

(i) an individual licensee's or agency licensee's authority to transact insurance on behalf of a particular insurance company; or

(ii) an individual licensee's authority to transact insurance on behalf of a particular agency licensee.

(15) "Title marketing representative" means a person who:

(a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(i) title insurance; or

(ii) escrow services; and

(b) does not have a search or escrow license as provided in Section 31A-23a-106.

(16) "Uniform application" means the version of the National Association of Insurance [~~Commissioner's~~] Commissioners' uniform application for resident and nonresident producer licensing at the time the application is filed.

(17) "Uniform business entity application" means the version of the National Association of Insurance [~~Commissioner's~~] Commissioners' uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 18. Section 31A-23a-106 is amended to read:

31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).

(b) A license type and a line of authority pertaining to a license type describe the type of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license type is intended to describe the matters to be considered under any education, examination, and training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

(2) (a) A producer license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

(iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) property insurance;

(v) casualty insurance, including a surety or other bond;

(vi) title insurance under one or more of the following categories:

(A) search, including authority to act as a title marketing representative;

(B) escrow, including authority to act as a title marketing representative; and

(C) title marketing representative only;

(vii) personal lines insurance; and

(viii) surplus lines, if the producer has the property or casualty or both lines of authority.

(b) A limited line producer license type includes the following limited lines of authority:

(i) limited line credit insurance;

(ii) travel insurance;

(iii) motor club insurance;

(iv) car rental related insurance;

(v) legal expense insurance;

(vi) crop insurance;

(vii) self-service storage insurance; [~~and~~]

(viii) bail bond producer[~~.~~]; and

(ix) guaranteed asset protection waiver.

(c) A customer service representative license type includes the following lines of authority, if held by the customer service representative's employer producer:

(i) life insurance, including a nonvariable contract;

(ii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iii) property insurance;

(iv) casualty insurance, including a surety or other bond;

(v) personal lines insurance; and

(vi) surplus lines, if the employer producer has the property or casualty or both lines of authority.

(d) A consultant license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the consultant has the life insurance line of authority;

(iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) property insurance;

(v) casualty insurance, including a surety or other bond; and

(vi) personal lines insurance.

(e) A managing general agent license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;

(iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) property insurance;

(v) casualty insurance, including a surety or other bond; and

(vi) personal lines insurance.

(f) A reinsurance intermediary license type includes the following lines of authority:

(i) life insurance, including a nonvariable contract;

(ii) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;

(iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7,

Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) property insurance;

(v) casualty insurance, including a surety or other bond; and

(vi) personal lines insurance.

(g) A [~~holder of licenses~~] person who holds a license under [~~Subsections~~] Subsection (2)(a), (d), (e), [~~and~~] or (f) has [~~all~~] the qualifications necessary to act as a holder of a license under Subsections (2)(b) and (c), except that the person may not act under Subsection (2)(b)(viii) or (ix).

(3) (a) The commissioner may by rule recognize other producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner and subject to Section 31A-2-404, recognize other categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

(4) The variable contracts, including variable life and annuity line of authority requires:

(a) licensure as a registered agent or broker by the [~~National Association of Securities Dealers~~] Financial Industry Regulatory Authority; and

(b) current registration with a securities broker-dealer.

(5) A surplus lines producer is a producer who has a surplus lines line of authority.

Section 19. Section 31A-23a-111 is amended to read:

31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (5);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-23a-113; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in [~~the~~] a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A line of authority issued under this chapter remains in force until:

(a) the qualifications pertaining to a line of authority are no longer met by the licensee; or

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5);

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(iii) the licensee dies or is adjudicated incompetent as defined under:

(A) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(B) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(iv) lapsed under Section 31A-23a-113; or

(v) voluntarily surrendered.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority;

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;

(ii) violates:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance producer's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) violates an insurance law, valid rule, or valid order of another state's insurance department;

(xi) obtains or attempts to obtain a license through misrepresentation or fraud;

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

(xiii) intentionally misrepresents the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

(xiv) is convicted of a felony;

(xv) admits or is found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere:

(A) uses fraudulent, coercive, or dishonest practices; or

(B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xviii) forges another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) improperly uses notes or another reference material to complete an examination for an insurance license;

(xx) knowingly accepts insurance business from an individual who is not licensed;

(xxi) fails to comply with an administrative or court order imposing a child support obligation;

(xxii) fails to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034; or

(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval by the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 20. Section 31A-23a-202 is amended to read:

31A-23a-202. Continuing education requirements.

(1) Pursuant to this section, the commissioner shall by rule prescribe the continuing education requirements for a producer and a consultant.

(2) (a) The commissioner may not state a continuing education requirement in terms of formal education.

(b) The commissioner may state a continuing education requirement in terms of [~~classroom hours, or their equivalent,~~] hours of insurance-related instruction received.

(c) Insurance-related formal education may be a substitute, in whole or in part, for [~~classroom hours, or their equivalent,~~] the hours required under Subsection (2)(b).

(3) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).

(b) (i) Except as provided in this section, the continuing education requirements shall require:

(A) that a licensee complete 24 credit hours of continuing education for every two-year licensing period;

(B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses; and

(C) that the licensee complete at least half of the required hours through classroom hours of insurance-related instruction.

(ii) [~~The hours not completed through classroom hours~~] An hour of continuing education in accordance with Subsection (3)(b)(i)[~~(C)~~] may be obtained through:

(A) classroom attendance;

[~~(A)~~] (B) home study;

[~~(B)~~] (C) watching a video recording;

[~~(C)~~] (D) experience credit; or

[~~(D)~~] (E) another method provided by rule.

(iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), a title insurance producer is required to complete 12 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses unless the title insurance producer is licensed in this state as a title insurance producer for 20 or more consecutive years.

(B) If a title insurance producer is licensed in this state as a title insurance producer for 20 or more consecutive years, the title insurance producer is required to complete 6 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses.

(C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), a title insurance producer is considered to have met the continuing education requirements imposed under Subsection (3)(b)(iii)(A) or (B) if the title insurance producer:

(I) is an active member in good standing with the Utah State Bar;

(II) is in compliance with the continuing education requirements of the Utah State Bar; and

(III) if requested by the department, provides the department evidence that the title insurance producer complied with the continuing education requirements of the Utah State Bar.

(c) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(d) (i) A licensee is exempt from continuing education requirements under this section if:

(A) the licensee was first licensed before April 1, 1978;

(B) the license does not have a continuous lapse for a period of more than one year, except for a license for which the licensee has had an exemption approved before May 11, 2011;

[~~(B)~~] (C) the licensee requests an exemption from the department; and

[~~(C)~~] (D) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is not required to apply again for the exemption.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(b);

(ii) authorize a continuing education provider or a state or national professional producer or consultant association to:

(A) offer a qualified program for a license type or line of authority on a geographically accessible basis; and

(B) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner; and

(iii) provide that membership by a producer or consultant in a state or national professional producer or consultant association is considered a substitute for the equivalent of two hours for each year during which the producer or consultant is a member of the professional association, except that the commissioner may not give more than two hours of continuing education credit in a year regardless of the number of professional associations of which the producer or consultant is a member.

(f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a professional producer or consultant association program may be less for an association member, on the basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall approve a continuing education provider or continuing education course that satisfies the requirements of this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule set the processes and procedures for continuing education provider registration and course approval.

(6) The requirements of this section apply only to a producer or consultant who is an individual.

(7) A nonresident producer or consultant is considered to have satisfied this state's continuing education requirements if the nonresident producer or consultant satisfies the nonresident producer's or consultant's home state's continuing education requirements for a licensed insurance producer or consultant.

(8) A producer or consultant subject to this section shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education applies.

Section 21. Section 31A-23a-203 is amended to read:

31A-23a-203. Training period requirements.

(1) A producer is eligible to add the surplus lines of authority to the person's producer's license if the producer:

(a) has passed the applicable examination;

(b) has been a producer with property and casualty lines of authority for at least three years during the four years immediately preceding the date of application; and

(c) has paid the applicable fee under Section 31A-3-103.

(2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

(3) (a) A resident producer with an accident and health line of authority may only sell long-term care insurance if the producer:

(i) initially completes a minimum of three hours of long-term care training before selling long-term care coverage; and

(ii) after completing the training required by Subsection (3)(a)(i), completes a minimum of three hours of long-term care training during each subsequent two-year licensing period.

(b) A course taken to satisfy a long-term care training requirement may be used toward satisfying a producer continuing education requirement.

(c) Long-term care training is not a continuing education requirement to renew a producer license.

(d) An insurer that issues long-term care insurance shall demonstrate to the commissioner, upon request, that a producer who is appointed by the insurer and who sells long-term care insurance coverage is in compliance with this Subsection (3).

[~~(3)~~] (4) The training periods required under this section apply only to an individual applying for a license under this chapter.

Section 22. Section 31A-23a-204 is amended to read:

31A-23a-204. Special requirements for title insurance producers and agencies.

A title insurance producer, including an agency, shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

(1) (a) A person that receives a new license under this title as a title insurance agency, shall at the time of licensure be owned or managed by [~~one or more individuals who are~~] at least one individual who is licensed for at least three of the five years immediately [~~proceeding~~] preceding the date on which the title insurance agency applies for a license with both:

(i) a search line of authority; and

(ii) an escrow line of authority.

(b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection (1)(a) by having the title insurance agency owned or managed by:

(i) one or more individuals who are licensed with the search line of authority for the time period provided in Subsection (1)(a); and

(ii) one or more individuals who are licensed with the escrow line of authority for the time period provided in Subsection (1)(a).

(c) A person licensed as a title insurance agency shall at all times during the term of licensure be owned or managed by at least one individual who is licensed for at least three years within the preceding five-year period with both:

(i) a search line of authority; and

(ii) an escrow line of authority.

[~~(c)~~] (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a).

(2) (a) A title insurance agency or producer appointed by an insurer shall maintain:

(i) a fidelity bond;

(ii) a professional liability insurance policy; or

(iii) a financial protection:

(A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

(B) that the commissioner considers adequate.

(b) The bond, insurance, or financial protection required by this Subsection (2):

(i) shall be supplied under a contract approved by the commissioner to provide protection against the improper performance of any service in conjunction with the issuance of a contract or policy of title insurance; and

(ii) be in a face amount no less than $50,000.

(c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt title insurance producers from the requirements of this Subsection (2) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(3) A title insurance agency or producer appointed by an insurer may maintain a reserve fund to the extent monies were deposited before July 1, 2008, and not withdrawn to the income of the title insurance producer.

(4) An examination for licensure shall include questions regarding the search and examination of title to real property.

(5) A title insurance producer may not perform the functions of escrow unless the title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.

(6) The Title and Escrow Commission shall adopt rules, subject to Section 31A-2-404, after consulting with the department and the department's test administrator, establishing an examination for a license that will satisfy this section.

(7) A license may be issued to a title insurance producer who has qualified:

(a) to perform only searches and examinations of title as specified in Subsection (4);

(b) to handle only escrow arrangements as specified in Subsection (5); or

(c) to act as a title marketing representative.

(8) (a) A person licensed to practice law in Utah is exempt from the requirements of Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

(b) In determining the number of policies issued by a person licensed to practice law in Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a policy to more than one party to the same closing, the person is considered to have issued only one policy.

(9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Section 23. Section 31A-23a-406 is amended to read:

31A-23a-406. Title insurance producer's business.

(1) A title insurance producer may do escrow involving real property transactions if all of the following exist:

(a) the title insurance producer is licensed with:

(i) the title line of authority; and

(ii) the escrow subline of authority;

(b) the title insurance producer is appointed by a title insurer authorized to do business in the state;

(c) the title insurance producer issues one or more of the following [~~is to be issued~~] as part of the transaction:

(i) an owner's policy of title insurance; or

(ii) a lender's policy of title insurance;

(d) [~~(i) all funds~~] money deposited with the title insurance producer in connection with any escrow:

[~~(A) are~~] (i) is deposited:

[~~(I)~~] (A) in a federally insured financial institution; and

[~~(II)~~] (B) in a trust account that is separate from all other trust account [~~funds that are~~] money that is not related to real estate transactions; [~~and~~]

[~~(B) are~~] (ii) is the property of the one or more persons entitled to [~~them~~] the money under the provisions of the escrow; and

[~~(ii) are~~] (iii) is segregated escrow by escrow in the records of the title insurance producer;

(e) earnings on [~~funds~~] money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow; [~~and~~]

(f) the escrow does not require the title insurance producer to hold:

(i) construction [~~funds~~] money; or

(ii) [~~funds~~] money held for exchange under Section 1031, Internal Revenue Code[~~.~~]; and

(g) the title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow.

(2) Notwithstanding Subsection (1), a title insurance producer may engage in the escrow business if:

(a) the escrow involves:

(i) a mobile home;

(ii) a grazing right;

(iii) a water right; or

(iv) other personal property authorized by the commissioner; and

(b) the title insurance producer complies with [~~all the requirements of~~] this section except for [~~the requirement of~~] Subsection (1)(c).

(3) [~~Funds~~] Money held in escrow:

(a) [~~are~~] is not subject to any debts of the title insurance producer;

(b) may only be used to fulfill the terms of the individual escrow under which the [~~funds were~~] money is accepted; and

(c) may not be used until [~~all~~] the conditions of the escrow [~~have been~~] are met.

(4) Assets or property other than escrow [~~funds~~] money received by a title insurance producer in accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

(b) otherwise comply with [~~all~~] the general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or [~~funds~~] money otherwise disbursed unless the segregated escrow account from which [~~funds are~~] money is to be disbursed contains a sufficient credit balance consisting of collected [~~or~~] and cleared [~~funds~~] money at the time the check is drawn, executed, or dated, or [~~funds are~~] money is otherwise disbursed.

(b) As used in this Subsection (5), [~~funds are~~] money is considered to be "collected [~~or~~] and cleared," and may be disbursed as follows:

(i) cash may be disbursed on the same day the cash is deposited;

(ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

[~~(iii) the following may be disbursed on the day following the date of deposit:~~]

[~~(A) a cashier's check;~~]

[~~(B) a certified check;~~]

[~~(C) a teller's check;~~]

[~~(D) a U.S. Postal Service money order; and~~]

[~~(E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and~~]

[~~(iv) any other check or deposit may be disbursed:~~]

[~~(A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System; or~~]

[~~(B) upon written notification from the financial institution to which the funds have been deposited, that final settlement has occurred on the deposited item.~~]

[~~(c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.~~]

(iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than $10,000:

(A) a cashier's check, certified check, or official check that is drawn on an existing account at a federally insured financial institution;

(B) a check drawn on the trust account of a principal broker or associate broker licensed under

Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the title producer's escrow account;

(C) a personal check not to exceed $500 per closing;

(D) a check drawn on the escrow account of another title producer, if the title producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the title producer in the escrow transaction; or

(E) a check issued by a farm credit service authorized under the Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq., as amended.

(c) Money received from a financial instrument described in Subsection (5)(b)(iii)(B) or (C) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

(6) [~~The~~] A title insurance producer shall maintain [~~records of all receipts and disbursements of escrow funds~~] a record of a receipt or disbursement of escrow money.

(7) [~~The~~] A title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

(c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

(8) If a title insurance producer conducts a search for real estate located in the state, the title insurance producer shall conduct a minimum mandatory search, as defined by rule made by the Title and Escrow Commission, subject to Section 31A-2-404.

Section 24. Section 31A-23a-408 is amended to read:

31A-23a-408. Representations of agency.

[~~No~~] A person may not represent [~~himself as~~] that the person is acting in behalf of an insurer unless a written agency contract is in effect giving the person authority from the insurer and the insurer [~~has appointed~~] appoints that person to act in behalf of the insurer.

Section 25. Section 31A-23a-412 is amended to read:

31A-23a-412. Place of business and residence address -- Records.

(1) (a) [~~All licensees~~] A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and telephone numbers of [~~their~~] the licensee's principal place of business[~~.~~]; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If [~~the~~] a licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall [~~provide to~~] register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of [~~any~~] a change of any of the following required to be registered with the commissioner under this section:

(i) an address [~~or~~];

(ii) a telephone number[~~.~~]; or

(iii) a business email address.

(2) (a) Except as provided under Subsection (3), [~~every~~] a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of [~~all~~] the transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

(i) be in an organized form;

(ii) be available to the commissioner for inspection upon reasonable notice; and

(iii) include all of the following:

(A) if the licensee is a producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:

(I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(II) the names of any other producers, limited line producers, consultants, managing general agents, or reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of [~~all~~] the consumer complaints forwarded to the licensee by an insurance regulator;

(B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

(C) any additional information which:

(I) is customary for a similar business; or

(II) may reasonably be required by the commissioner by rule.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) or Section 31A-23a-413 shall be available for the inspection of the commissioner during all business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 26. Section 31A-23a-415 is amended to read:

31A-23a-415. Assessment on title insurance agencies or title insurers -- Account created.

(1) For purposes of this section:

(a) "Premium" is as defined in Subsection 59-9-101(3).

(b) "Title insurer" means a person:

(i) making any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety;

(ii) proposing to make any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

(C) surety; or

(iii) transacting or proposing to transact any phase of title insurance, including:

(A) soliciting;

(B) negotiating preliminary to execution;

(C) executing of a contract of title insurance;

(D) insuring; and

(E) transacting matters subsequent to the execution of the contract and arising out of the contract.

(c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or personal property located in Utah, an owner of real or personal property, the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of:

(i) liens or encumbrances upon, defects in, or the unmarketability of the title to the property; or

(ii) invalidity or unenforceability of any liens or encumbrances on the property.

(2) (a) The commissioner may assess each title insurer and each title insurance agency an annual assessment:

(i) determined by the Title and Escrow Commission:

(A) after consultation with the commissioner; and

(B) in accordance with this Subsection (2); and

(ii) to be used for the purposes described in Subsection (3).

(b) A title insurance agency shall be assessed up to:

(i) [~~$200~~] $250 for the first office in each county in which the title insurance agency maintains an office; and

(ii) [~~$100~~] $150 for each additional office the title insurance agency maintains in the county described in Subsection (2)(b)(i).

(c) A title insurer shall be assessed up to:

(i) [~~$200~~] $250 for the first office in each county in which the title insurer maintains an office;

(ii) [~~$100~~] $150 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

(I) title insurance agencies under Subsection (2)(b); and

(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and

(C) multiplying:

(I) the amount calculated under Subsection (2)(c)(iii)(B); and

(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title and Escrow Commission by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed [~~$75,000~~] $80,000 annually.

(3) (a) Money received by the state under this section shall be deposited into the Title Licensee Enforcement Restricted Account.

(b) There is created in the General Fund a restricted account known as the "Title Licensee Enforcement Restricted Account."

(c) The Title Licensee Enforcement Restricted Account shall consist of the money received by the state under this section.

(d) The commissioner shall administer the Title Licensee Enforcement Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or expense incurred by the department in the administration, investigation, and enforcement of this part and Part 5, Compensation of Producers and Consultants, related to:

(i) the marketing of title insurance; and

(ii) audits of agencies.

(e) An appropriation from the Title Licensee Enforcement Restricted Account is nonlapsing.

(4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Section 27. Section 31A-23a-501 is amended to read:

31A-23a-501. Licensee compensation.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee; or

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or

(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or

(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or

(B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) must be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation and the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(4) (a) For purposes of this Subsection (4), "producer" includes:

(i) a producer;

(ii) an affiliate of a producer; or

(iii) a consultant.

(b) Beginning January 1, 2010, in addition to any other disclosures required by this section, a producer may not accept or receive any compensation from an insurer or third party administrator for the placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's purchase of the health benefit plan the producer:

(i) except as provided in Subsection (4)(c), discloses in writing to the customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure; and

(ii) except as provided in Subsection (4)(c):

(A) obtains the customer's signed acknowledgment that the disclosure under Subsection (4)(b)(i) was made to the customer; or

(B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made to the customer; and

(II) keeps the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.

(c) If the compensation to the producer from an insurer or third party administrator is for the renewal of a health benefit plan, once the producer has made an initial disclosure that complies with Subsection (4)(b), the producer does not have to disclose compensation received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal period immediately following 36 months after the initial disclosure.

(d) (i) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the customer is in force, maintain a copy of:

(A) the signed acknowledgment described in Subsection (4)(b)(i); or

(B) the signed statement described in Subsection (4)(b)(ii).

(ii) The standard application developed in accordance with Section 31A-22-635 shall include a place for a producer to provide the disclosure required by this Subsection (4), and if completed, shall satisfy the requirement of Subsection (4)(d)(i).

(e) Subsection (4)(b)(ii) does not apply to:

(i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or

(ii) the placement of insurance in a secondary or residual market.

(5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.

(6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

(7) A licensee may not receive noncommission compensation from an insured or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.

Section 28. Section 31A-25-208 is amended to read:

31A-25-208. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal and reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (4);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-25-210; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in [~~the~~] a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke a license;

(ii) suspend a license for a specified period of 12 months or less;

(iii) limit a license in whole or in part; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another third party administrator that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the third party administrator's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated an insurance law, valid rule, or valid order of another state's insurance department;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the agency license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against the person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

(8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by the court.

(9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 29. Section 31A-26-206 is amended to read:

31A-26-206. Continuing education requirements.

(1) Pursuant to this section, the commissioner shall by rule prescribe continuing education requirements for each class of license under Section 31A-26-204.

(2) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (2).

(b) (i) Except as otherwise provided in [~~Subsection (2)(b)(iii)~~] this section, the continuing education requirements shall require:

(A) that a licensee complete 24 credit hours of continuing education for every two-year licensing period;

(B) that [~~three~~] 3 of the 24 credit hours described in Subsection (2)(b)(i)(A) be ethics courses; and

(C) that the licensee complete at least half of the required hours through classroom hours of insurance-related instruction.

[~~(ii) The hours not completed through classroom hours~~]

(ii) A continuing education hour completed in accordance with Subsection (2)(b)(i)[~~(C)~~] may be obtained through:

(A) classroom attendance;

[~~(A)~~] (B) home study;

[~~(B)~~] (C) watching a video recording;

[~~(C)~~] (D) experience credit; or

[~~(D)~~] (E) other methods provided by rule.

(iii) Notwithstanding Subsections (2)(b)(i)(A) and (B), a title insurance adjuster is required to complete 12 credit hours of continuing education for every two-year licensing period, with [~~three~~] 3 of the credit hours being ethics courses.

(c) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(d) (i) [~~Beginning May 3, 1999, a~~] A licensee is exempt from the continuing education requirements of this section if:

(A) the licensee was first licensed before April 1, [~~1970~~] 1978;

(B) the license does not have a continuous lapse for a period of more than one year, except for a license for which the licensee has had an exemption approved before May 11, 2011;

[~~(B)~~] (C) the licensee requests an exemption from the department; and

[~~(C)~~] (D) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (2)(d)(i), the licensee is not required to apply again for the exemption.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (2)(b); and

(ii) authorize a professional adjuster [~~associations~~] association to:

(A) offer a qualified [~~programs for all classes of licenses~~] program for a classification of license on a geographically accessible basis; and

(B) collect a reasonable [~~fees~~] fee for funding and administration of [~~the continuing education programs~~] a qualified program, subject to the review and approval of the commissioner.

(f) (i) [~~The fees~~] A fee permitted under Subsection (2)(e)(ii)(B) that [~~are~~] is charged to fund and administer a qualified program shall reasonably relate to the [~~costs~~] cost of administering the qualified program.

(ii) Nothing in this section shall prohibit a provider of a continuing education [~~programs or courses~~] program or course from charging [~~fees~~] a fee for attendance at [~~courses~~] a course offered for continuing education credit.

(iii) [~~The fees~~] A fee permitted under Subsection (2)(e)(ii)(B) that [~~are~~] is charged for attendance at an association program may be less for an association member, [~~based~~] on the basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(3) The continuing education requirements of this section apply only to [~~licensees who are natural persons~~] a licensee who is an individual.

(4) The continuing education requirements of this section do not apply to [~~members~~] a member of the Utah State Bar.

(5) The commissioner shall designate [~~courses that satisfy~~] a course that satisfies the requirements of this section, including [~~those~~] a course presented by [~~insurers~~] an insurer.

(6) A nonresident adjuster is considered to have satisfied this state's continuing education requirements if:

(a) the nonresident adjuster satisfies the nonresident producer's home state's continuing education requirements for a licensed insurance adjuster; and

(b) on the same basis the nonresident adjuster's home state considers satisfaction of Utah's continuing education requirements for a producer as satisfying the continuing education requirements of the home state.

(7) A licensee subject to this section shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education requirement applies.

Section 30. Section 31A-26-208 is amended to read:

31A-26-208. Nonresident jurisdictional agreement.

(1) (a) If a nonresident license applicant has a valid license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:

(i) waive any license requirement for a license under this chapter; and

(ii) issue the nonresident license applicant a nonresident adjuster's license.

(b) Subsection (1)(a) applies if:

(i) the nonresident license applicant:

(A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident adjuster license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

(D) has paid the applicable fees under Section 31A-3-103;

(ii) the nonresident license applicant's license in the applicant's home state is in good standing; and

(iii) the nonresident license applicant's home state awards nonresident adjuster licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.

(2) A nonresident applicant shall execute in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and courts of this state on any matter related to the adjuster's insurance activities in this state, on the basis of:

(a) service of process under Sections 31A-2-309 and 31A-2-310; or

(b) other service authorized under the Utah Rules of Civil Procedure or Section 78B-3-206.

(3) The commissioner may verify [~~the third party administrator's~~] an adjuster's licensing status through the database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.

Section 31. Section 31A-26-213 is amended to read:

31A-26-213. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

(a) revoked or suspended under Subsection (5);

(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under Section 31A-26-214.5; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which it is voluntarily surrendered.

(3) Unless otherwise stated in [~~the~~] a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A license classification issued under this chapter remains in force until:

(a) the qualifications pertaining to a license classification are no longer met by the licensee; or

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5); or

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action.

(5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a license classification;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a license classification;

(iii) limit in whole or in part:

(A) a license; or

(B) a license classification; or

(iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or license classification under Section 31A-26-202, 31A-26-203, 31A-26-204, or 31A-26-205;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance adjuster that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance adjuster's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated an insurance law, valid rule, or valid order of another state's insurance department;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. [~~Secs.~~] Sec. 1033 and 1034; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for conducting an insurance business without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time not to exceed five years within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years without the express approval of the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 32. Section 31A-26-306 is amended to read:

31A-26-306. Place of business -- Records.

(1) (a) An insurance adjuster licensed under this chapter shall[~~: (i)~~] register and maintain with the commissioner:

(i) the address and telephone number of the licensee's principal place of business; [~~and~~]

(ii) a valid business email address at which the commissioner may contact the licensee; and

[~~(ii)~~] (iii) if the licensee is an individual, [~~provide~~] the licensee's residence address and telephone number.

(b) A licensee shall notify the commissioner within 30 days of [~~any change of~~] a change in one of the following required to be registered under Subsection (1)(a):

(i) an address [~~or~~];

(ii) a telephone number[~~.~~]; or

(iii) a business email address.

(2) Except as provided under Subsection (3), [~~every~~] an insurance adjuster shall keep at the address registered under Subsection (1), a record of [~~all~~] the transactions consummated under the insurance adjuster's license, including a record of:

(a) each investigation or adjustment undertaken or consummated; and

(b) [~~any~~] a fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment.

(3) Subsection (2) is satisfied if the records specified in [~~that subsection~~] Subsection (2) can be obtained immediately from a central storage place elsewhere by on-line computer terminals located at the registered address.

(4) (a) [~~The records~~] A record maintained as to a transaction under Subsection (2) shall be kept available for the inspection of the commissioner during all business hours for a period of time after the date of the transaction specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding [~~records~~] a record after the then applicable record retention period is passed does not place the licensee in violation of a later-adopted longer record retention period.

Section 33. Section 31A-28-107 is amended to read:

31A-28-107. Board of directors.

(1) (a) The board of directors of the association shall consist of:

(i) at least five but not more than nine member insurers who:

(A) subject to Subsection (1)(e), serve terms as established in the plan of operation; and

(B) are selected by member insurers, subject to the approval of the commissioner; and

(ii) two public representatives appointed by the commissioner.

(b) (i) The commissioner shall make the appointment of a public representative coincide with the association's annual meeting at which the association's board of directors is elected.

(ii) A public representative may not be:

(A) an officer, director, or employee of an insurer; or

(B) a person engaged in the business of insurance.

(iii) Subject to Subsection (1)(e), a public representative shall serve a term of three years.

(c) When a vacancy occurs in the membership of the board of directors for any reason:

(i) if the vacancy is of a member insurer, a replacement may be elected for the unexpired term by a majority vote of the remaining board members, subject to the approval of the commissioner; and

(ii) if the vacancy is of a public representative, the commissioner shall appoint a replacement for the unexpired term.

(d) In approving a selection or in appointing a member to the board of directors, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(e) Notwithstanding Subsections (1)(a) and (b), the commissioner shall, at the time of election, reelection, appointment, or reappointment adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board of directors is selected during any two-year period.

(2) (a) A member of the board of directors may be reimbursed from the assets of the association for expenses incurred by the member as a member of the board of directors.

(b) A public representative appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the public representative's service, but in addition to reimbursement under Subsection (2)(a), a public representative may receive per diem and travel expenses established by the board with the approval of the commissioner.

[~~(b)~~] (c) Except as provided in [~~Subsection (2)(a)~~] Subsections (2)(a) and (b), a member of the board of directors may not be compensated by the association for the member's services.

Section 34. Section 31A-29-103 is amended to read:

31A-29-103. Definitions.

As used in this chapter:

(1) "Board" means the board of directors of the pool created in Section 31A-29-104.

(2) (a) "Creditable coverage" has the same meaning as provided in Section 31A-1-301.

(b) "Creditable coverage" does not include a period of time in which there is a significant break in coverage, as defined in Section 31A-1-301.

(3) "Domicile" means the place where an individual has a fixed and permanent home and principal establishment:

(a) to which the individual, if absent, intends to return; and

(b) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(4) "Enrollee" means an individual who has met the eligibility requirements of the pool and is covered by a pool policy under this chapter.

(5) "Health benefit plan":

(a) is defined in Section 31A-1-301; and

(b) does not include a plan that:

(i) (A) has a maximum actuarial value less that 100% of the basic health care plan; or

(B) has a maximum annual limit of $100,000 or less; and

(ii) meets other criteria established by the board.

(6) "Health care facility" means any entity providing health care services which is licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(7) "Health care insurance" is defined in Section 31A-1-301.

(8) "Health care provider" has the same meaning as provided in Section 78B-3-403.

(9) "Health care services" means:

(a) any service or product:

(i) used in furnishing to any individual medical care or hospitalization; or

(ii) incidental to furnishing medical care or hospitalization; and

(b) any other service or product furnished for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(10) "Health maintenance organization" has the same meaning as provided in Section 31A-8-101.

(11) "Health plan" means any arrangement by which an individual, including a dependent or spouse, covered or making application to be covered under the pool has:

(a) access to hospital and medical benefits or reimbursement including group or individual insurance or subscriber contract;

(b) coverage through:

(i) a health maintenance organization;

(ii) a preferred provider prepayment;

(iii) group practice;

(iv) individual practice plan; or

(v) health care insurance;

(c) coverage under an uninsured arrangement of group or group-type contracts including employer self-insured, cost-plus, or other benefits methodologies not involving insurance;

(d) coverage under a group type contract which is not available to the general public and can be obtained only because of connection with a particular organization or group; and

(e) coverage by Medicare or other governmental benefit.

(12) "HIPAA" means the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~].

(13) "HIPAA eligible" means an individual who is eligible under the provisions of the Health Insurance Portability and Accountability Act [~~of 1996, Pub. L. 104-191, 110 Stat. 1936~~].

(14) "Insurer" means:

(a) an insurance company authorized to transact accident and health insurance business in this state;

(b) a health maintenance organization; or

(c) a self-insurer not subject to federal preemption.

(15) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq., as amended.

(16) "Medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq., as amended.

(17) "Plan of operation" means the plan developed by the board in accordance with Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under Section 31A-29-106.

(18) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104.

(19) "Pool fund" means the Comprehensive Health Insurance Pool Enterprise Fund created in Section 31A-29-120.

(20) "Pool policy" means a health benefit plan policy issued under this chapter.

(21) "Preexisting condition" has the same meaning as defined in Section 31A-1-301.

(22) (a) "Resident" or "residency" means a person who is domiciled in this state.

(b) A resident retains residency if that resident leaves this state:

(i) to serve in the armed forces of the United States; or

(ii) for religious or educational purposes.

(23) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.

Section 35. Section 31A-29-106 is amended to read:

31A-29-106. Powers of board.

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact health care insurance business. In addition, the board shall have the specific authority to:

(a) enter into contracts to carry out the provisions and purposes of this chapter, including, with the approval of the commissioner, contracts with:

(i) similar pools of other states for the joint performance of common administrative functions; or

(ii) persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking such legal action necessary to avoid the payment of improper claims against the pool or the coverage provided through the pool;

(c) establish appropriate rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the pool;

(d) issue policies of insurance in accordance with the requirements of this chapter;

(e) retain an executive director and appropriate legal, actuarial, and other personnel as necessary to provide technical assistance in the operations of the pool;

(f) establish rules, conditions, and procedures for reinsuring risks under this chapter;

(g) cause the pool to have an annual audit of its operations by the state auditor;

(h) coordinate with the Department of Health in seeking to obtain from the Centers for Medicare and Medicaid Services, or other appropriate office or agency of government, all appropriate waivers, authority, and permission needed to coordinate the coverage available from the pool with coverage available under Medicaid, either before or after Medicaid coverage, or as a conversion option upon completion of Medicaid eligibility, without the necessity for requalification by the enrollee;

(i) provide for and employ cost containment measures and requirements including preadmission certification, concurrent inpatient review, and individual case management for the purpose of making the pool more cost-effective;

(j) offer pool coverage through contracts with health maintenance organizations, preferred provider organizations, and other managed care systems that will manage costs while maintaining quality care;

(k) establish annual limits on benefits payable under the pool to or on behalf of any enrollee;

(l) exclude from coverage under the pool specific benefits, medical conditions, and procedures for the purpose of protecting the financial viability of the pool;

(m) administer the Pool Fund;

(n) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter; and

(o) adopt, trademark, and copyright a trade name for the pool for use in marketing and publicizing the pool and its products.

(2) (a) The board shall prepare and submit an annual report to the Legislature which shall include:

(i) the net premiums anticipated;

(ii) actuarial projections of payments required of the pool;

(iii) the expenses of administration; and

(iv) the anticipated reserves or losses of the pool.

(b) The budget for operation of the pool is subject to the approval of the board.

(c) The administrative budget of the board and the commissioner under this chapter shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is subject to review and approval by the Legislature.

(3) (a) The board shall on or before September 1, 2004, require the plan administrator or an independent actuarial consultant retained by the plan administrator to redetermine the reasonable equivalent of the criteria for uninsurability required under Subsection 31A-30-106(1)[~~(j)~~](h) that is used by the board to determine eligibility for coverage in the pool.

(b) The board shall redetermine the criteria established in Subsection (3)(a) at least every five years thereafter.

Section 36. Section 31A-30-103 is amended to read:

31A-30-103. Definitions.

As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with [~~Section~~] Sections 31A-30-106 and 31A-30-106.1, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods used by the covered carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

(4) "Basic benefit plan" or "basic coverage" means the coverage provided in the Basic Health Care Plan under Section 31A-22-613.5.

(5) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under this title.

(6) (a) Except as provided in Subsection (6)(b), "case characteristics" means demographic or other objective characteristics of a covered insured that are considered by the carrier in determining premium rates for the covered insured.

(b) "Case characteristics" do not include:

(i) duration of coverage since the policy was issued;

(ii) claim experience; and

(iii) health status.

(7) "Class of business" means all or a separate grouping of covered insureds that is permitted by the [~~department~~] commissioner in accordance with Section 31A-30-105.

(8) "Conversion policy" means a policy providing coverage under the conversion provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

(9) "Covered carrier" means any individual carrier or small employer carrier subject to this chapter.

(10) "Covered individual" means any individual who is covered under a health benefit plan subject to this chapter.

(11) "Covered insureds" means small employers and individuals who are issued a health benefit plan that is subject to this chapter.

(12) "Dependent" means an individual to the extent that the individual is defined to be a dependent by:

(a) the health benefit plan covering the covered individual; and

(b) Chapter 22, Part 6, Accident and Health Insurance.

(13) "Established geographic service area" means a geographical area approved by the commissioner within which the carrier is authorized to provide coverage.

(14) "Index rate" means, for each class of business as to a rating period for covered insureds with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(15) "Individual carrier" means a carrier that provides coverage on an individual basis through a health benefit plan regardless of whether:

(a) coverage is offered through:

(i) an association;

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar groups; or

(b) the policy or contract is situated out-of-state.

(16) "Individual conversion policy" means a conversion policy issued to:

(a) an individual; or

(b) an individual with a family.

(17) "Individual coverage count" means the number of natural persons covered under a carrier's health benefit products that are individual policies.

(18) "Individual enrollment cap" means the percentage set by the commissioner in accordance with Section 31A-30-110.

(19) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or that could have been charged or offered, by the carrier to covered insureds with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(20) "Premium" means [~~all~~] money paid by covered insureds and covered individuals as a condition of receiving coverage from a covered carrier, including any fees or other contributions associated with the health benefit plan.

(21) (a) "Rating period" means the calendar period for which premium rates established by a covered carrier are assumed to be in effect, as determined by the carrier.

(b) A covered carrier may not have:

(i) more than one rating period in any calendar month; and

(ii) no more than 12 rating periods in any calendar year.

(22) "Resident" means an individual who has resided in this state for at least 12 consecutive months immediately preceding the date of application.

(23) "Short-term limited duration insurance" means a health benefit product that:

(a) is not renewable; and

(b) has an expiration date specified in the contract that is less than 364 days after the date the plan became effective.

(24) "Small employer carrier" means a carrier that provides health benefit plans covering eligible employees of one or more small employers in this state, regardless of whether:

(a) coverage is offered through:

(i) an association;

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar grouping; or

(b) the policy or contract is situated out-of-state.

(25) "Uninsurable" means an individual who:

(a) is eligible for the Comprehensive Health Insurance Pool coverage under the underwriting criteria established in Subsection 31A-29-111(5); or

(b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

(ii) has a condition of health that does not meet consistently applied underwriting criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)[~~(i) and (j)~~](g) and (h) for which coverage the applicant is applying.

(26) "Uninsurable percentage" for a given calendar year equals UC/CI where, for purposes of this formula:

(a) "CI" means the carrier's individual coverage count as of December 31 of the preceding year; and

(b) "UC" means the number of uninsurable individuals who were issued an individual policy on or after July 1, 1997.

Section 37. Section 31A-30-105 is amended to read:

31A-30-105. Establishment of classes of business.

(1) For [~~policies that go into~~] a policy that takes effect on or after January 1, 2011, a covered carrier may not establish a separate class of business unless:

(a) the covered carrier submits an application to the [~~department~~] commissioner to establish a separate class of business;

(b) the covered carrier demonstrates to the satisfaction of the [~~department~~] commissioner that a separate class of business is justified under the provisions of this section; and

(c) the [~~department~~] commissioner approves the carrier's application for the use of a separate class of business.

(2) (a) The [~~presumption of the department shall be~~] commissioner shall have a presumption against the use of a separate class of business by a covered insured, except when the covered carrier demonstrates that [~~the provisions of~~] this Subsection (2) [~~apply~~] applies.

(b) The [~~department~~] commissioner may approve the use of a separate class of business only if the covered carrier can demonstrate that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier; or

(iii) the covered carrier provides coverage to one or more association groups.

(3) The commissioner may establish regulations to provide for a period of transition in order for a covered carrier to come into compliance with Subsection (2) in the instance of acquisition of an additional class of business from another covered carrier.

(4) The commissioner may approve the establishment of up to five classes of business per covered carrier upon application to the commissioner and a finding by the commissioner that such action would substantially enhance the efficiency and fairness of the health insurance marketplace subject to this chapter.

(5) A covered carrier may not establish a class of business based solely on the marketing or sale of a health benefit plan as a defined contribution arrangement health benefit plan, or through the Health Insurance Exchange.

Section 38. Section 31A-30-106 is amended to read:

31A-30-106. Individual premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for health benefit plans for individuals under this chapter are subject to [~~the provisions of~~] this section.

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) (i) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to the individual under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate [~~provided in Section 31A-30-106.1~~] except as provided under Subsection (1)(b)(ii).

(ii) A carrier that offers individual and small employer health benefit plans may use the small employer index rates to establish the rate limitations for individual policies, even if some individual policies are rated below the small employer base rate.

(c) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan; and

(iii) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan.

(d) (i) A carrier offering an individual health benefit plan shall apply rating factors, including case characteristics, consistently with respect to all covered insureds in a class of business.

(ii) Rating factors shall produce premiums for identical individuals that:

(A) differ only by the amounts attributable to plan design; and

(B) do not reflect differences due to the nature of the individuals assumed to select particular health benefit products.

(iii) A carrier offering an individual health benefit plan shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(e) For the purposes of this Subsection (1), a health benefit plan that uses a restricted network provision may not be considered similar coverage to a health benefit plan that does not use a restricted network provision, provided that use of the restricted network provision results in substantial difference in claims costs.

(f) A carrier offering a health benefit plan to an individual may not, without prior approval of the commissioner, use case characteristics other than:

(i) age;

(ii) gender;

(iii) geographic area; and

(iv) family composition.

(g) (i) The commissioner shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(A) implement this chapter; and

(B) assure that rating practices used by carriers who offer health benefit plans to individuals are consistent with the purposes of this chapter.

(ii) The rules described in Subsection (1)(g)(i) may include rules that:

(A) assure that differences in rates charged for health benefit products by carriers who offer health

benefit plans to individuals are reasonable and reflect objective differences in plan design, not including differences due to the nature of the individuals assumed to select particular health benefit products;

(B) prescribe the manner in which case characteristics may be used by carriers who offer health benefit plans to individuals;

(C) implement the individual enrollment cap under Section 31A-30-110, including specifying:

(I) the contents for certification;

(II) auditing standards;

(III) underwriting criteria for uninsurable classification; and

(IV) limitations on high risk enrollees under Section 31A-30-111; and

(D) establish the individual enrollment cap under Subsection 31A-30-110(1).

(h) Before implementing regulations for underwriting criteria for uninsurable classification, the commissioner shall contract with an independent consulting organization to develop industry-wide underwriting criteria for uninsurability based on an individual's expected claims under open enrollment coverage exceeding 325% of that expected for a standard insurable individual with the same case characteristics.

(i) The commissioner shall revise rules issued for Sections 31A-22-602 and 31A-22-605 regarding individual accident and health policy rates to allow rating in accordance with this section.

(2) For purposes of Subsection (1)(c)(i), if a health benefit product is a health benefit product into which the covered carrier is no longer enrolling new covered insureds, the covered carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit product into which the covered carrier is actively enrolling new covered insureds.

(3) (a) A covered carrier may not transfer a covered insured involuntarily into or out of a class of business.

(b) A covered carrier may not offer to transfer a covered insured into or out of a class of business unless the offer is made to transfer all covered insureds in the class of business without regard to:

(i) case characteristics;

(ii) claim experience;

(iii) health status; or

(iv) duration of coverage since issue.

(4) (a) A carrier who offers a health benefit plan to an individual shall maintain at the carrier's principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that the carrier's rating methods and practices are:

(i) based upon commonly accepted actuarial assumptions; and

(ii) in accordance with sound actuarial principles.

(b) (i) Each carrier subject to this section shall file with the commissioner, on or before April 1 of each year, in a form, manner, and containing such information as prescribed by the commissioner, an actuarial certification certifying that:

(A) the carrier is in compliance with this chapter; and

(B) the rating methods of the carrier are actuarially sound.

(ii) A copy of the certification required by Subsection (4)(b)(i) shall be retained by the carrier at the carrier's principal place of business.

(c) A carrier shall make the information and documentation described in this Subsection (4) available to the commissioner upon request.

(d) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 39. Section 31A-30-106.1 is amended to read:

31A-30-106.1. Small employer premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for small employer health benefit plans under this chapter are subject to [~~the provisions of~~] this section for a health benefit plan that is issued or renewed, on or after January 1, 2011.

(2) (a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to an employer group under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d).

(3) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(a) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(b) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status,

or duration of coverage of the covered individuals as determined from the small employer carrier's rate manual for the class of business, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d); and

(c) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined for the class of business from the small employer carrier's rate manual.

(4) (a) Adjustments in rates for claims experience, health status, and duration from issue may not be charged to individual employees or dependents.

(b) Rating adjustments and factors, including case characteristics, shall be applied uniformly and consistently to the rates charged for all employees and dependents of the small employer.

(c) Rating factors shall produce premiums for identical groups that:

(i) differ only by the amounts attributable to plan design; and

(ii) do not reflect differences due to the nature of the groups assumed to select particular health benefit products.

(d) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(5) A health benefit plan that uses a restricted network provision may not be considered similar coverage to a health benefit plan that does not use a restricted network provision, provided that use of the restricted network provision results in substantial difference in claims costs.

(6) The small employer carrier may not use case characteristics other than the following:

(a) age of the employee, as determined at the beginning of the plan year, limited to:

(i) the following age bands:

(A) less than 20;

(B) 20-24;

(C) 25-29;

(D) 30-34;

(E) 35-39;

(F) 40-44;

(G) 45-49;

(H) 50-54;

(I) 55-59;

(J) 60-64; and

(K) 65 and above; and

(ii) a standard slope ratio range for each age band, applied to each family composition tier rating structure under Subsection (6)(c):

(A) as developed by the [~~department~~] commissioner by administrative rule;

(B) not to exceed an overall ratio of 5:1; and

(C) the age slope ratios for each age band may not overlap;

(b) geographic area; and

(c) family composition, limited to:

(i) an overall ratio of 5:1 or less; and

(ii) a four tier rating structure that includes:

(A) employee only;

(B) employee plus spouse;

(C) employee plus a dependent or dependents; and

(D) a family, consisting of an employee plus spouse, and a dependent or dependents.

(7) If a health benefit plan is a health benefit plan into which the small employer carrier is no longer enrolling new covered insureds, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit product into which the small employer carrier is actively enrolling new covered insureds.

(8) (a) A covered carrier may not transfer a covered insured involuntarily into or out of a class of business.

(b) A covered carrier may not offer to transfer a covered insured into or out of a class of business unless the offer is made to transfer all covered insureds in the class of business without regard to:

(i) case characteristics;

(ii) claim experience;

(iii) health status; or

(iv) duration of coverage since issue.

(9) (a) Each small employer carrier shall maintain at the small employer carrier's principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that the small employer carrier's rating methods and practices are:

(i) based upon commonly accepted actuarial assumptions; and

(ii) in accordance with sound actuarial principles.

(b) (i) Each small employer carrier shall file with the commissioner on or before April 1 of each year, in a form and manner and containing information as prescribed by the commissioner, an actuarial certification certifying that:

(A) the small employer carrier is in compliance with this chapter; and

(B) the rating methods of the small employer carrier are actuarially sound.

(ii) A copy of the certification required by Subsection (9)(b)(i) shall be retained by the small

employer carrier at the small employer carrier's principal place of business.

(c) A small employer carrier shall make the information and documentation described in this Subsection (9) available to the commissioner upon request.

(10) (a) The commissioner shall, by July 1, 2010, establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) implement this chapter; and

(ii) assure that rating practices used by small employer carriers under this section and carriers for individual plans under Section 31A-30-106, [~~as effective~~] in effect on January 1, 2011, are consistent with the purposes of this chapter.

(b) The rules may:

(i) assure that differences in rates charged for health benefit plans by carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups or individuals assumed to select particular health benefit plans; and

(ii) prescribe the manner in which case characteristics may be used by small employer and individual carriers.

(11) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 40. Section 31A-30-106.5 is amended to read:

31A-30-106.5. Conversion policy -- Premiums -- Rating restrictions.

(1) [~~All provisions of Section 31A-30-106.1 apply~~] Section 31A-30-106 applies to conversion policies.

(2) Conversion policy premium rates may not exceed by more than 35% the index rate for small employers with similar case characteristics for any class of business in which the policy form has been [~~approved~~] filed.

(3) An insurer may not consider pregnancy of a covered insured in determining its conversion policy premium rates.

Section 41. Section 31A-30-108 is amended to read:

31A-30-108. Eligibility for small employer and individual market.

(1) (a) Small employer carriers shall accept residents for small group coverage as set forth in the Health Insurance Portability and Accountability Act, [~~P.L. 104-191, 110 Stat. 1962,~~] Sec. 2701(f) and 2711(a).

(b) Individual carriers shall accept residents for individual coverage pursuant to:

(i) [~~to P.L. 104-191, 110 Stat. 1979~~] Health Insurance Portability and Accountability Act, Sec. 2741(a)-(b); and

(ii) Subsection (3).

(2) (a) Small employer carriers shall offer to accept all eligible employees and their dependents at the same level of benefits under any health benefit plan provided to a small employer.

(b) Small employer carriers may:

(i) request a small employer to submit a copy of the small employer's quarterly income tax withholdings to determine whether the employees for whom coverage is provided or requested are bona fide employees of the small employer; and

(ii) deny or terminate coverage if the small employer refuses to provide documentation requested under Subsection (2)(b)(i).

(3) Except as provided in Subsections (5) and (6) and Section 31A-30-110, individual carriers shall accept for coverage individuals to whom all of the following conditions apply:

(a) the individual is not covered or eligible for coverage:

(i) (A) as an employee of an employer;

(B) as a member of an association; or

(C) as a member of any other group; and

(ii) under:

(A) a health benefit plan; or

(B) a self-insured arrangement that provides coverage similar to that provided by a health benefit plan as defined in Section 31A-1-301;

(b) the individual is not covered and is not eligible for coverage under any public health benefits arrangement including:

(i) the Medicare program established under Title XVIII of the Social Security Act;

(ii) any act of Congress or law of this or any other state that provides benefits comparable to the benefits provided under this chapter; or

(iii) coverage under the Comprehensive Health Insurance Pool Act created in Chapter 29, Comprehensive Health Insurance Pool Act;

(c) unless the maximum benefit has been reached the individual is not covered or eligible for coverage under any:

(i) Medicare supplement policy;

(ii) conversion option;

(iii) continuation or extension under COBRA; or

(iv) state extension;

(d) the individual has not terminated or declined coverage described in Subsection (3)(a), (b), or (c) within 93 days of application for coverage, unless the individual is eligible for individual coverage under [~~P.L. 104-191, 110 Stat. 1979~~] Health

Insurance Portability and Accountability Act, Sec. 2741(b), in which case, the requirement of this Subsection (3)(d) does not apply; and

(e) the individual is certified as ineligible for the Health Insurance Pool if:

(i) the individual applies for coverage with the Comprehensive Health Insurance Pool within 30 days after being rejected or refused coverage by the covered carrier and reapplies for coverage with that covered carrier within 30 days after the date of issuance of a certificate under Subsection 31A-29-111(5)(c); or

(ii) the individual applies for coverage with any individual carrier within 45 days after:

(A) notice of cancellation of coverage under Subsection 31A-29-115(1); or

(B) the date of issuance of a certificate under Subsection 31A-29-111(5)(c) if the individual applied first for coverage with the Comprehensive Health Insurance Pool.

(4) (a) If coverage is obtained under Subsection (3)(e)(i) and the required premium is paid, the effective date of coverage shall be the first day of the month following the individual's submission of a completed insurance application to that covered carrier.

(b) If coverage is obtained under Subsection (3)(e)(ii) and the required premium is paid, the effective date of coverage shall be the day following the:

(i) cancellation of coverage under Subsection 31A-29-115(1); or

(ii) submission of a completed insurance application to the Comprehensive Health Insurance Pool.

(5) (a) An individual carrier is not required to accept individuals for coverage under Subsection (3) if the carrier issues no new individual policies in the state after July 1, 1997.

(b) A carrier described in Subsection (5)(a) may not issue new individual policies in the state for five years from July 1, 1997.

(c) Notwithstanding Subsection (5)(b), a carrier may request permission to issue new policies after July 1, 1999, which may only be granted if:

(i) the carrier accepts uninsurables as is required of a carrier entering the market under Subsection 31A-30-110; and

(ii) the commissioner finds that the carrier's issuance of new individual policies:

(A) is in the best interests of the state; and

(B) does not provide an unfair advantage to the carrier.

(6) (a) If the Comprehensive Health Insurance Pool, as set forth under [~~Title 31A~~], Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if enrollment is capped or suspended, an individual carrier may decline to accept individuals applying for individual enrollment, other than individuals applying for coverage as set forth in [~~P.L. 104-191, 110 Stat. 1979~~] Health Insurance Portability and Accountability Act, Sec. 2741 (a)-(b).

(b) Within two calendar days of taking action under Subsection (6)(a), an individual carrier will provide written notice to the [~~Utah Insurance Department~~] department.

(7) (a) If a small employer carrier offers health benefit plans to small employers through a network plan, the small employer carrier may:

(i) limit the employers that may apply for the coverage to those employers with eligible employees who live, reside, or work in the service area for the network plan; and

(ii) within the service area of the network plan, deny coverage to an employer if the small employer carrier has demonstrated to the commissioner that the small employer carrier:

(A) will not have the capacity to deliver services adequately to enrollees of any additional groups because of the small employer carrier's obligations to existing group contract holders and enrollees; and

(B) applies this section uniformly to all employers without regard to:

(I) the claims experience of an employer, an employer's employee, or a dependent of an employee; or

(II) any health status-related factor relating to an employee or dependent of an employee.

(b) (i) A small employer carrier that denies a health benefit product to an employer in any service area in accordance with this section may not offer coverage in the small employer market within the service area to any employer for a period of 180 days after the date the coverage is denied.

(ii) This Subsection (7)(b) does not:

(A) limit the small employer carrier's ability to renew coverage that is in force; or

(B) relieve the small employer carrier of the responsibility to renew coverage that is in force.

(c) Coverage offered within a service area after the 180-day period specified in Subsection (7)(b) is subject to the requirements of this section.

Section 42. Section 31A-30-110 is amended to read:

31A-30-110. Individual enrollment cap.

(1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

(2) The commissioner shall raise the individual enrollment cap by .5% at the later of the following dates:

(a) six months from the last increase in the individual enrollment cap; or

(b) the date when CCI/TI is greater than .90, where:

(i) "CCI" is the total individual coverage count for all carriers certifying that their uninsurable percentage has reached the individual enrollment cap; and

(ii) "TI" is the total individual coverage count for all carriers.

(3) The commissioner may establish a minimum number of uninsurable individuals that a carrier entering the market who is subject to this chapter must accept under the individual enrollment provisions of this chapter.

(4) Beginning July 1, 1997, an individual carrier may decline to accept individuals applying for individual enrollment under Subsection 31A-30-108(3), other than individuals applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

(a) the uninsurable percentage for that carrier equals or exceeds the cap established in Subsection (1); and

(b) the covered carrier has certified on forms provided by the commissioner that its uninsurable percentage equals or exceeds the individual enrollment cap.

(5) The department may audit a carrier's records to verify whether the carrier's uninsurable classification meets industry standards for underwriting criteria as established by the commissioner in accordance with Subsection 31A-30-106(1)[~~(i)~~](h).

(6) (a) If the commissioner determines that individual enrollment is causing a substantial adverse effect on premiums, enrollment, or experience, the commissioner may suspend, limit, or delay further individual enrollment for up to 12 months.

(b) The commissioner shall adopt rules to establish a uniform methodology for calculating and reporting loss ratios for individual policies for determining whether the individual enrollment provisions of Section 31A-30-108 should be waived for an individual carrier experiencing significant and adverse financial impact as a result of complying with those provisions.

Section 43. Section 31A-30-112 is amended to read:

31A-30-112. Employee participation levels.

(1) (a) Except as provided in Subsection (2) and Section 31A-30-206, a requirement used by a covered carrier in determining whether to provide coverage to a small employer, including a requirement for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the covered carrier.

(b) In addition to applying Subsection 31A-1-301[~~(121)~~](123), a covered carrier may require that a small employer have a minimum of two eligible employees to meet participation requirements.

(2) A covered carrier may not increase a requirement for minimum employee participation or a requirement for minimum employer contribution applicable to a small employer at any time after the small employer is accepted for coverage.

Section 44. Section 31A-31-108 is amended to read:

31A-31-108. Assessment of insurers.

(1) For purposes of this section:

(a) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define:

(i) "annuity consideration";

(ii) "membership fees";

(iii) "other fees";

(iv) "deposit-type contract funds"; and

(v) "other considerations in Utah."

(b) "Utah consideration" means:

(i) the total premiums written for Utah risks;

(ii) annuity consideration;

(iii) membership fees collected by the insurer;

(iv) other fees collected by the insurer;

(v) deposit-type contract funds; and

(vi) other considerations in Utah.

(c) "Utah risks" means insurance coverage on the lives, health, or against the liability of persons residing in Utah, or on property located in Utah, other than property temporarily in transit through Utah.

(2) To implement this chapter, Section 34A-2-110, and Section 76-6-521, the commissioner may assess each admitted insurer and each nonadmitted insurer transacting insurance under Chapter 15, Parts 1, Unauthorized Insurers and Surplus Lines, and 2, [~~Unauthorized Insurers~~] Risk Retention Groups Act, an annual fee as follows:

(a) $150 for an insurer, if the sum of the Utah consideration for that insurer is less than or equal to $1,000,000;

(b) $400 for an insurer, if the sum of the Utah consideration for that insurer is greater than $1,000,000 but is less than or equal to $2,500,000;

(c) $700 for an insurer, if the sum of the Utah consideration for that insurer is greater than $2,500,000 but is less than or equal to $5,000,000;

(d) $1,350 for an insurer, if the sum of the Utah consideration for that insurer is greater than $5,000,000 but less than or equal to $10,000,000;

(e) $5,150 for an insurer, if the sum of the Utah consideration for that insurer is greater than $10,000,000 but less than $50,000,000; and

(f) $12,350 for an insurer, if the sum of the Utah consideration for that insurer equals or exceeds $50,000,000.

(3) [~~All money~~] Money received by the state under this section shall be deposited [~~in the General Fund as a dedicated credit of the department for the purpose of providing funds to pay for any costs and expenses incurred by the department in the administration, investigation, and enforcement of this chapter, Section 34A-2-110, and Section 76-6-521.~~] into the Insurance Fraud Investigation Restricted Account created in Subsection (4).

(4) (a) There is created in the General Fund a restricted account known as the "Insurance Fraud Investigation Restricted Account."

(b) The Insurance Fraud Investigation Restricted Account shall consist of the money received by the commissioner under this section and Section 31A-31-109.

(c) The commissioner shall administer the Insurance Fraud Investigation Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Insurance Fraud Investigation Restricted Account to pay for a cost or expense incurred by the commissioner in the administration, investigation, and enforcement of this chapter, Section 34A-2-110, and Section 76-6-521.

Section 45. Section 31A-31-109 is amended to read:

31A-31-109. Civil penalties.

(1) In addition to other penalties provided by law, a person who violates this chapter:

(a) is subject to the following civil penalties:

(i) the person shall make full restitution; and

(ii) the person shall pay the costs of enforcement of this chapter for the case in which the person is found to have violated this chapter:

(A) as determined by the one or more authorized agencies involved; and

(B) including costs of:

(I) investigators;

(II) attorneys; and

(III) other public employees; and

(b) in the discretion of the court, may be required to pay to the state a civil penalty not to exceed three times that amount of value improperly sought or received from the fraudulent insurance act.

(2) (a) Money paid under Subsection (1)(a)(i) shall be paid to the person damaged by the fraudulent insurance act.

(b) Money paid under Subsection (1)(a)(ii) shall be paid to each applicable authorized agency in the following order:

(i) to the [~~General Fund as a dedicated credit of the department~~] Insurance Fraud Investigation Restricted Account created in Section 31A-31-108 for the costs of enforcement incurred by the [~~department~~] commissioner;

(ii) to the General Fund for the costs of enforcement incurred by a state agency other than the [~~department~~] commissioner;

(iii) to the applicable political subdivision for the costs of enforcement incurred by the political subdivision; and

(iv) to the applicable criminal investigative department or agency of the United States for the costs of enforcement incurred by the department or agency.

(c) Money paid under Subsection (1)(b) shall be paid into the General Fund.

(3) (a) A civil penalty assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(b) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Section 46. Section 31A-35-202 is amended to read:

31A-35-202. Board responsibilities.

(1) The board shall:

[~~(1)~~] (a) meet:

[~~(a)~~] (i) at least quarterly; and

[~~(b)~~] (ii) at the call of the chair;

[~~(2)~~] (b) make written recommendations to the commissioner for rules governing the following aspects of the bail bond surety insurance business:

[~~(a)~~] (i) qualifications, applications, and fees for obtaining:

[~~(i)~~] (A) a license required by this Section 31A-35-401; or

[~~(ii)~~] (B) a certificate;

[~~(b)~~] (ii) limits on the aggregate amounts of bail bonds;

[~~(c)~~] (iii) unprofessional conduct;

[~~(d)~~] (iv) procedures for hearing and resolving allegations of unprofessional conduct; and

[~~(e)~~] (v) sanctions for unprofessional conduct;

[~~(3)~~] (c) screen:

[~~(a)~~] (i) bail bond surety company license applications; and

[~~(b)~~] (ii) persons applying for a bail bond surety company license; and

[~~(4)~~] (d) recommend to the commissioner action regarding the granting, renewing, suspending,

revoking, and reinstating of bail bond surety company license[~~; and~~].

(2) The board may:

[~~(5)~~] (a) conduct investigations of allegations of unprofessional conduct on the part of persons or bail bond sureties involved in the business of bail bond surety insurance; and

(b) provide the results of the investigations described in Subsection [~~(5)~~] (2)(a) to the commissioner with recommendations for:

(i) action; and

(ii) any appropriate sanctions.

Section 47. Section 31A-35-406 is amended to read:

31A-35-406. Renewal and reinstatement.

(1) (a) A license under this chapter expires annually on August 14. To renew its license under this chapter, on or before [~~the last day of the month in which the license expires~~] July 15 a bail bond surety company shall:

(i) complete and submit a renewal application to the department; and

(ii) pay the department the applicable renewal fee established in accordance with Section 31A-3-103.

(b) A bail bond surety company shall renew its license under this chapter annually as established by department rule, regardless of when the license is issued.

(2) A bail bond surety company may apply for reinstatement of an expired bail bond surety company license within one year following the expiration of the license under Subsection (1) by:

(a) submitting the renewal application required by Subsection (1); and

(b) paying a license reinstatement fee established in accordance with Section 31A-3-103.

(3) If a bail bond surety company license has been expired for more than one year, the person applying for reinstatement of the bail bond surety license shall:

(a) submit a new application form to the commissioner; and

(b) pay the application fee established in accordance with Section 31A-3-103.

(4) If a bail bond surety company license is suspended, the applicant may not submit an application for a bail bond surety company license until after the end of the period of suspension.

(5) A fee collected under this section shall be deposited in the restricted account created in Section 31A-35-407.

Section 48. Section 31A-35-602 is amended to read:

31A-35-602. Place of business -- Records to be kept there.

(1) (a) [~~Every~~] A bail bond surety company shall have and maintain in this state a place of business:

(i) accessible to the public; and

(ii) where the bail bond surety company principally conducts transactions authorized by its bail bond surety company license.

(b) The address of the place of business described in Subsection (1)(a) shall appear upon:

(i) the application for a bail bond surety company license; and

(ii) [~~the~~] a bail bond surety company license issued under this chapter.

(c) In addition to complying with Subsection (1)(b), a bail bond surety company shall register and maintain with the commissioner the following at which the commissioner may contact the bail bond surety company:

(i) a telephone number; and

(ii) a business email address.

[~~(c)~~] (d) A bail bond surety company shall notify the commissioner [~~of any change in the address required by this Subsection (1) within 20 days after the change.~~] within 20 days of a change in the bail bond surety company's:

(i) place of business address;

(ii) telephone number; or

(iii) business email address.

[~~(d)~~] (e) This section does not prohibit a bail bond surety company from maintaining the place of business required under this section in the licensee's residence, if the residence is in Utah.

(2) The bail bond surety company shall keep at the place of business described in Subsection (1)(a) the records required under Section 31A-35-604.

Section 49. Section 31A-37-103 is amended to read:

31A-37-103. Chapter exclusivity.

(1) Except as provided in [~~Subsection~~] Subsections (2) and (3) or otherwise provided in this chapter, a provision of this title other than this chapter does not apply to a captive insurance company.

(2) To the extent that a provision of the following does not contradict this chapter, the provision applies to a captive insurance company that receives a certificate of authority under this chapter:

(a) Chapter 2, Administration of the Insurance Laws;

(b) Chapter 4, Insurers in General;

(c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(d) Chapter 14, Foreign Insurers;

(e) Chapter 16, Insurance Holding Companies;

(f) Chapter 17, Determination of Financial Condition;

(g) Chapter 18, Investments;

(h) Chapter 19a, Utah Rate Regulation Act;

(i) Chapter 27, Delinquency Administrative Action Provisions; and

(j) Chapter 27a, Insurer Receivership Act.

[~~(2)~~] (3) In addition to this chapter, and subject to Section 31A-37a-103:

(a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to a special purpose financial captive insurance company; and

(b) for purposes of a special purpose financial captive insurance company, a reference in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

Section 50. Section 31A-37-202 is amended to read:

31A-37-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure a risk other than a risk of:

(A) its parent or affiliate;

(B) a controlled unaffiliated business; or

(C) a combination of Subsections (1)(b)(i)(A) and (B);

(ii) an association captive insurance company may not insure a risk other than a risk of:

(A) an affiliate;

(B) a member organization of its association; and

(C) an affiliate of a member organization of its association;

(iii) an industrial insured captive insurance company may not insure a risk other than a risk of:

(A) an industrial insured that is part of the industrial insured group;

(B) an affiliate of an industrial insured that is part of the industrial insured group; and

(C) a controlled unaffiliated business of:

(I) an industrial insured that is part of the industrial insured group; or

(II) an affiliate of an industrial insured that is part of the industrial insured group;

(iv) a special purpose captive insurance company may only insure a risk of its parent;

(v) a captive insurance company may not provide:

(A) personal motor vehicle insurance coverage;

(B) homeowner's insurance coverage; or

(C) a component of a coverage described in this Subsection (1)(b)(v); and

(vi) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-37-303.

(c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:

(i) insurance;

(ii) reinsurance; or

(iii) both insurance and reinsurance.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

(i) a board of directors meeting; or

(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of:

(I) articles of incorporation or the charter of the corporation; and

(II) bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-37-106;

(ii) formed as a reciprocal shall:

(A) file with the commissioner:

(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

(II) a certified copy of the subscribers' agreement of the reciprocal;

(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and

(IV) any other statement or document required by the commissioner under Section 31A-37-106; and

(B) submit to the commissioner for approval a description of the:

(I) coverages;

(II) deductibles;

(III) coverage limits;

(IV) rates; and

(V) any other information the commissioner requires under Section 31A-37-106.

(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).

(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.

(iii) A reciprocal captive insurance company shall inform the commissioner of a material change in a rate within 30 days of the adoption of the change.

(c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:

(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;

(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;

(iii) the overall soundness of the plan of operation of the applicant captive insurance company;

(iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:

(A) a parent;

(B) a member organization; or

(C) an industrial insured; and

(v) any other factor the commissioner:

(A) adopts by rule under Section 31A-37-106; and

(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.

(d) In addition to the information required by Subsections (4)(a), (b), and (c), an applicant sponsored captive insurance company shall file with the commissioner:

(i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:

(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and

(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;

(ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company, including records pertaining to a protected cell, available for inspection or examination by the commissioner;

(iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and

(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.

(5) (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

(i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and

(ii) the laws of the state in which the public official serves require the information to be confidential.

(c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(6) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:

(i) a fee for examining, investigating, and processing, by a department employee, of an application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may:

(i) assign a department employee or retain legal, financial, and examination services from outside the department to perform the services described in:

(A) Subsection (6)(a); and

(B) Section 31A-37-502; and

(ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.

(7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(8) A certificate of authority granted under this section expires annually and must be renewed by July 1 of each year.

Section 51. Section 31A-37-504 is amended to read:

31A-37-504. Examinations for branch and alien captive insurance companies.

[~~(1) This section applies to all business written by a captive insurance company.~~]

[~~(2) Notwithstanding this section, the~~]

(1) The examination for a branch captive insurance company shall be of branch business and branch operations only, if the branch captive insurance company:

(a) provides annually to the commissioner a certificate of compliance, or an equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and

(b) demonstrates to the commissioner's satisfaction that the branch captive insurance company is operating in sound financial condition in accordance with [~~all~~] the applicable laws and regulations of the jurisdiction in which the branch captive insurance company is formed.

[~~(3)~~] (2) As a condition of obtaining a certificate of authority, an alien captive insurance company shall grant authority to the commissioner to examine the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

[~~(4) To the extent that the provisions of Chapters 2, 4, 5, 14, 16, 17, 18, 19a, 27, and 27a do not contradict this section, these chapters apply to captive insurance companies that have received a certificate of authority under this chapter.~~]

Section 52. Section 31A-40-308 is enacted to read:

31A-40-308. Material changes.

A professional employer organization shall notify the commissioner within 30 days of a change in:

(1) ownership;

(2) an address or telephone number;

(3) a contact person; or

(4) business email address at which the commissioner may contact the professional employer organization.

Section 53. Section 59-9-105 is amended to read:

59-9-105. Tax on certain insurers to pay for relative value study and other publications or services.

(1) [~~Each~~] An insurer [~~providing~~] that provides coverage for motor vehicle liability, uninsured motorist, and personal injury protection shall pay to the State Tax Commission on or before March 31 of each year, a tax of .01% on the total premiums received for these coverages during the preceding calendar year from policies covering motor vehicle risks in this state.

(2) The taxable premium under this section shall be reduced by [~~all~~] the premiums returned or credited to policyholders on direct business subject to tax in this state.

(3) [~~All money~~] Money received by the state under this section shall be deposited [~~in the General Fund as a dedicated credit for the purpose of providing funds~~] into the Relative Value Study Restricted Account created in Subsection (4).

(4) (a) There is created in the General Fund a restricted account known as the "Relative Value Study Restricted Account."

(b) The Relative Value Study Restricted Account shall consist of the money received by the insurance commissioner under:

(i) Section 31A-2-208; and

(ii) this section.

(c) The insurance commissioner shall administer the Relative Value Study Restricted Account. Subject to appropriations by the Legislature, the insurance commissioner shall use the money deposited into the Relative Value Study Restricted Account to pay for [~~any~~] costs and expenses incurred by the [~~Insurance Department~~] insurance commissioner:

[~~(a)~~] (i) in conducting, maintaining, and administering the relative value study referred to in Section 31A-22-307;

[~~(b)~~] (ii) to prepare, publish, and distribute publications relating to insurance and consumers of insurance as provided in Section 31A-2-208; and

[~~(c)~~] (iii) in providing the services of the [~~Insurance Department~~] insurance commissioner through the use of:

[~~(i)~~] (A) electronic commerce; and

[~~(ii)~~] (B) other information technology.

Section 54. Section 63I-2-231 is amended to read:

63I-2-231. Repeal dates, Title 31A.

[~~(1) Section 31A-23a-415 is repealed July 1, 2011.~~]

[~~(2)~~] Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed January 1, 2013.

Section 55. Section 63J-1-602.2 is amended to read:

63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.

(1) Appropriations from the Technology Development Restricted Account created in Section 31A-3-104.

(2) Appropriations from the Criminal Background Check Restricted Account created in Section 31A-3-105.

(3) Appropriations from the Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(4) Appropriations from the Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

(5) Appropriations from the Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

[~~(5)~~] (6) The fund for operating the state's Federal Health Care Tax Credit Program, as provided in Section 31A-38-104.

[~~(6)~~] (7) The Special Administrative Expense Account created in Section 35A-4-506.

[~~(7)~~] (8) Funding for a new program or agency that is designated as nonlapsing under Section 36-24-101.

[~~(8)~~] (9) The Oil and Gas Conservation Account created in Section 40-6-14.5.

[~~(9)~~] (10) The Off-Highway Access and Education Restricted Account created in Section 41-22-19.5.

Section 56. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) Certain funds associated with the Law Enforcement Operations Account, as provided in Section 51-9-411.

(2) The Public Safety Honoring Heroes Restricted Account created in Section 53-1-118.

(3) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2-107.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) The DNA Specimen Restricted Account created in Section 53-10-407.

(7) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

(8) Certain funds appropriated from the Uniform School Fund to the State Board of Education for new teacher bonus and performance-based compensation plans, as provided in Section 53A-17a-148.

(9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for implementation of proposals to improve mathematics achievement test scores, as provided in Section 53A-17a-152.

(10) The School Building Revolving Account created in Section 53A-21-401.

(11) Money received by the State Office of Rehabilitation for the sale of certain products or services, as provided in Section 53A-24-105.

(12) The State Board of Regents, as provided in Section 53B-6-104.

(13) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

(14) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(15) Certain surcharges on residence and business telecommunications access lines imposed by the Public Service Commission, as provided in Section 54-8b-10.

(16) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

(17) The Nurse Education and Enforcement Account created in Section 58-31b-103.

(18) The Certified Nurse Midwife Education and Enforcement Account created in Section 58-44a-103.

(19) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security

Personnel Licensing Act, as provided in Section 58-63-103.

(20) The Professional Geologist Education and Enforcement Account created in Section 58-76-103.

(21) Appropriations from the Relative Value Study Restricted Account created in Section 59-9-105.

[~~(21)~~] (22) Certain money in the Water Resources Conservation and Development Fund, as provided in Section 59-12-103.

Section 57. Intent language regarding lapsing of money.

It is the intent of the Legislature that money received by the Insurance Department during fiscal year 2010-11 under the following shall be considered dedicated credits and in closing out fiscal year 2010-11 the unspent dedicated credits shall lapse to the appropriate restricted account created by the amendments made by this bill:

(1) Section 31A-2-208;

(2) Section 31A-31-108;

(3) Section 31A-31-109; and

(4) Section 59-9-105.

Section 58. Effective date.

This bill takes effect on May 10, 2011, except that the amendments to Section 31A-3-304 in this bill take effect on July 1, 2013.

Section 59. Retrospective operation.

The amendments to the following sections in this bill have retrospective operation to January 1, 2011:

(1) Section 31A-22-701;

(2) Section 31A-30-103; and

(3) Section 31A-30-106.

CHAPTER 285
H. B. 35
Passed March 10, 2011
Approved March 25, 2011
Effective July 1, 2011

SALES AND USE TAX ACT REVISIONS

Chief Sponsor: Wayne A. Harper
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to address provisions related to the imposition and administration of sales and use taxes and certain taxes, fees, and charges administered by the State Tax Commission, to address the delegates appointed to the governing board of the Streamlined Sales and Use Tax Agreement, and to address the location of certain transactions related to computer software.

Highlighted Provisions:

This bill:

- defines terms and modifies definitions;
- addresses the delegates appointed to the governing board of the Streamlined Sales and Use Tax Agreement;
- addresses the sales and use taxation of a product that is transferred electronically;
- addresses provisions related to sales and use tax exemption certificates;
- addresses amnesty for a seller that fails to pay certain taxes, fees, or charges administered by the State Tax Commission;
- addresses the location of certain transactions related to computer software; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-12-102, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263
59-12-102.3, as enacted by Laws of Utah 2008, Chapter 384
59-12-103, as last amended by Laws of Utah 2010, Chapter 412
59-12-106, as last amended by Laws of Utah 2008, Chapters 382 and 384
59-12-128, as last amended by Laws of Utah 2009, Chapter 212
59-12-211, as last amended by Laws of Utah 2010, Chapters 142, 234, and 263

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

Section 1. Section 59-12-102 is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the Federal Communications Commission.

(2) (a) "900 service" means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber's:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) "900 service" does not include a charge for:

(i) a collection service a seller of a telecommunications service provides to a subscriber; or

(ii) the following a subscriber sells to the subscriber's customer:

(A) a product; or

(B) a service.

(3) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.

(5) "Agreement combined tax rate" means the sum of the tax rates:

(a) listed under Subsection (6); and

(b) that are imposed within a local taxing jurisdiction.

(6) "Agreement sales and use tax" means a tax imposed under:

(a) Subsection 59-12-103(2)(a)(i)(A);

(b) Subsection 59-12-103(2)(b)(i);

(c) Subsection 59-12-103(2)(c)(i);

(d) Subsection 59-12-103(2)(d)(i)(A)(I);

(e) Section 59-12-204;

(f) Section 59-12-401;

(g) Section 59-12-402;

(h) Section 59-12-703;

(i) Section 59-12-802;

(j) Section 59-12-804;

(k) Section 59-12-1102;

(l) Section 59-12-1302;

(m) Section 59-12-1402;

(n) Section 59-12-1802;

(o) Section 59-12-2003;

(p) Section 59-12-2103;

(q) Section 59-12-2213;

(r) Section 59-12-2214;

(s) Section 59-12-2215;

(t) Section 59-12-2216;

(u) Section 59-12-2217; or

(v) Section 59-12-2218.

(7) "Aircraft" is as defined in Section 72-10-102.

(8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

(a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined in Subsection 59-12-107(1)(f) of an airline; and

(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:

(i) check, diagnose, overhaul, and repair:

(A) an onboard system of a fixed wing turbine powered aircraft; and

(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

(A) an inspection;

(B) a repair, including a structural repair or modification;

(C) changing landing gear; and

(D) addressing issues related to an aging fixed wing turbine powered aircraft;

(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(9) "Alcoholic beverage" means a beverage that:

(a) is suitable for human consumption; and

(b) contains .5% or more alcohol by volume.

(10) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

(b) "Ancillary service" includes:

(i) a conference bridging service;

(ii) a detailed communications billing service;

(iii) directory assistance;

(iv) a vertical service; or

(v) a voice mail service.

(11) "Area agency on aging" is as defined in Section 62A-3-101.

(12) "Assisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by an individual:

(a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and

(b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

(13) "Assisted cleaning or washing of tangible personal property" means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

(a) who is not the purchaser of the cleaning or washing of the tangible personal property; and

(b) at the direction of the seller of the cleaning or washing of the tangible personal property.

(14) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Surface Transportation Board.

(15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the following that is used as the primary source of energy to produce fuel or electricity:

(i) material from a plant or tree; or

(ii) other organic matter that is available on a renewable basis, including:

(A) slash and brush from forests and woodlands;

(B) animal waste;

(C) methane produced:

(I) at landfills; or

(II) as a byproduct of the treatment of wastewater residuals;

(D) aquatic plants; and

(E) agricultural products.

(b) "Biomass energy" does not include:

(i) black liquor;

(ii) treated woods; or

(iii) biomass from municipal solid waste other than methane produced:

(A) at landfills; or

(B) as a byproduct of the treatment of wastewater residuals.

(16) (a) "Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

(i) distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) "Bundled transaction" does not include:

(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

(ii) the sale of real property;

(iii) the sale of services to real property;

(iv) the retail sale of tangible personal property and a service if:

(A) the tangible personal property:

(I) is essential to the use of the service; and

(II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller's purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller's sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

(B) subject to Subsection (16)(f):

(I) the seller's purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price of that retail sale; or

(II) the seller's sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total sales price of that retail sale.

(c) (i) For purposes of Subsection (16)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

(I) accompanies the sale of the tangible personal property, product, or service; and

(II) is incidental or immaterial to the sale of the tangible personal property, product, or service;

(B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or

(C) an item of tangible personal property, a product, or a service included in the definition of "purchase price."

(ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection (16)(a)(ii), property sold for one nonitemized price does not

include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

(A) a binding sales document; or

(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (16)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

(e) (i) For purposes of Subsection (16)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

(A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or

(B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection (16)(b)(vi), a seller:

(A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection (16)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection (16)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

(17) "Certified automated system" means software certified by the governing board of the agreement that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the agreement;

(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (17)(a)(i).

(18) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement; and

(b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(19) (a) Subject to Subsection (19)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(20) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (48) or residential use under Subsection [~~(94)~~] (95).

(22) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (22)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(23) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a

majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(24) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(25) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(26) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" [~~includes~~] may include providing a telephone number as part of the ancillary service described in Subsection (26)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (26)(a).

(27) "Construction materials" means any tangible personal property that will be converted into real property.

(28) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(29) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (29)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(30) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(31) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (31)(b)(i) through (v);

(c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in a form described in Subsections (31)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(32) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

(33) "Directory assistance" means an ancillary service of providing:

(a) address information; or

(b) telephone number information.

(34) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

(i) cannot withstand repeated use; and

(ii) are purchased by, for, or on behalf of a person other than:

(A) a health care facility as defined in Section 26-21-2;

(B) a health care provider as defined in Section 78B-3-403;

(C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or

(D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

(b) "Disposable home medical equipment or supplies" does not include:

(i) a drug;

(ii) durable medical equipment;

(iii) a hearing aid;

(iv) a hearing aid accessory;

(v) mobility enhancing equipment; or

(vi) tangible personal property used to correct impaired vision, including:

(A) eyeglasses; or

(B) contact lenses.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.

(35) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

(i) recognized in:

(A) the official United States Pharmacopoeia;

(B) the official Homeopathic Pharmacopoeia of the United States;

(C) the official National Formulary; or

(D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);

(ii) intended for use in the:

(A) diagnosis of disease;

(B) cure of disease;

(C) mitigation of disease;

(D) treatment of disease; or

(E) prevention of disease; or

(iii) intended to affect:

(A) the structure of the body; or

(B) any function of the body.

(b) "Drug" does not include:

(i) food and food ingredients;

(ii) a dietary supplement;

(iii) an alcoholic beverage; or

(iv) a prosthetic device.

(36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means equipment that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection (36)(a).

(c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include mobility enhancing equipment.

(37) "Electronic" means:

(a) relating to technology; and

(b) having:

(i) electrical capabilities;

(ii) digital capabilities;

(iii) magnetic capabilities;

(iv) wireless capabilities;

(v) optical capabilities;

(vi) electromagnetic capabilities; or

(vii) capabilities similar to Subsections (37)(b)(i) through (vi).

(38) "Employee" is as defined in Section 59-10-401.

(39) "Fixed guideway" means a public transit facility that uses and occupies:

(a) rail for the use of public transit; or

(b) a separate right-of-way for the use of public transit.

(40) "Fixed wing turbine powered aircraft" means an aircraft that:

(a) is powered by turbine engines;

(b) operates on jet fuel; and

(c) has wings that are permanently attached to the fuselage of the aircraft.

(41) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(42) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

(A) liquid form;

(B) concentrated form;

(C) solid form;

(D) frozen form;

(E) dried form; or

(F) dehydrated form; and

(ii) that are:

(A) sold for:

(I) ingestion by humans; or

(II) chewing by humans; and

(B) consumed for the substance's:

(I) taste; or

(II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).

(c) "Food and food ingredients" does not include:

(i) an alcoholic beverage;

(ii) tobacco; or

(iii) prepared food.

(43) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(44) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

(45) "Governing board of the agreement" means the governing board of the agreement that is:

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

(46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

(i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;

(ii) the judicial branch of the state, including the courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

(iv) the National Guard;

(v) an independent entity as defined in Section 63E-1-102; or

(vi) a political subdivision as defined in Section 17B-1-102.

(b) "Governmental entity" does not include the state systems of public and higher education, including:

(i) a college campus of the Utah College of Applied Technology;

(ii) a school;

(iii) the State Board of Education;

(iv) the State Board of Regents; or

(v) a state institution of higher education as defined in Section 53B-3-102.

(47) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

(48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (48)(d)(i) would otherwise be made with nonrecycled materials; or

(e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a cogeneration facility as defined in Section 54-2-1.

(49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge for installing:

(i) tangible personal property; or

(ii) a product transferred electronically.

(b) "Installation charge" does not include a charge for:

(i) repairs or renovations of:

[~~(i)~~] (A) tangible personal property; or

[~~(ii)~~] (B) a product transferred electronically[~~.~~]; or

(ii) attaching tangible personal property or a product transferred electronically:

(A) to other tangible personal property; and

(B) as part of a manufacturing or fabrication process.

(50) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:

(i) (A) a fixed term; or

(B) an indeterminate term; and

(ii) consideration.

(b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) "Lease" or "rental" does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title:

(A) upon completion of required payments; and

(B) if the payment of an option price does not exceed the greater of:

(I) $100; or

(II) 1% of the total required payments; or

(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (50)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

(51) "Load and leave" means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(52) "Local taxing jurisdiction" means a:

(a) county that is authorized to impose an agreement sales and use tax;

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

(53) "Manufactured home" is as defined in Section 58-56-3.

(54) For purposes of Section 59-12-104, "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (54)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1.

(55) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

(i) an adopted child or adopted stepchild; or

(ii) a foster child or foster stepchild;

(b) grandchild or stepgrandchild;

(c) grandparent or stepgrandparent;

(d) nephew or stepnephew;

(e) niece or stepniece;

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

(i) person who is the spouse of a person described in Subsections (55)(a) through (g); or

(j) person similar to a person described in Subsections (55)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(56) "Mobile home" is as defined in Section 58-56-3.

(57) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(58) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (58)(a)(i) and the termination point described in Subsection (58)(a)(ii) are not fixed.

(b) "Mobile wireless service" includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "commercial mobile radio service provider."

(59) (a) Except as provided in Subsection (59)(c), "mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (59)(a).

(c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(60) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales and use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(61) "Model 2 seller" means a seller registered under the agreement that:

(a) except as provided in Subsection (61)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(62) (a) Subject to Subsection (62)(b), "model 3 seller" means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least $500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (62)(a), "model 3 seller" includes an affiliated group of sellers using the same proprietary system.

(63) "Model 4 seller" means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(64) "Modular home" means a modular unit as defined in Section 58-56-3.

(65) "Motor vehicle" is as defined in Section 41-1a-102.

(66) "Oil shale" means a group of fine black to dark brown shales containing bituminous material that yields petroleum upon distillation.

(67) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(68) (a) "Paging service" means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (68)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(69) "Pawnbroker" is as defined in Section 13-32a-102.

(70) "Pawn transaction" is as defined in Section 13-32a-102.

(71) (a) "Permanently attached to real property" means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (71)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:

(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (71)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections (71)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection [~~(111)~~] (112)(c).

(72) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(73) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(74) (a) "Postpaid calling service" means a telecommunications service a person obtains by making a payment on a call-by-call basis:

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) "Postpaid calling service" includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(75) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(76) "Prepaid calling service" means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(77) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

(ii) other service that is not a telecommunications service, including:

(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(78) (a) "Prepared food" means:

(i) food:

(A) sold in a heated state; or

(B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) except as provided in Subsection (78)(c), food sold with an eating utensil provided by the seller, including a:

(A) plate;

(B) knife;

(C) fork;

(D) spoon;

(E) glass;

(F) cup;

(G) napkin; or

(H) straw.

(b) "Prepared food" does not include:

(i) food that a seller only:

(A) cuts;

(B) repackages; or

(C) pasteurizes; or

(ii) (A) the following:

(I) raw egg;

(II) raw fish;

(III) raw meat;

(IV) raw poultry; or

(V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection (78)(b)(ii)(A) to prevent food borne illness; or

(iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is

manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

(B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

(IV) bread;

(V) a bun;

(VI) a cake;

(VII) a cookie;

(VIII) a croissant;

(IX) a danish;

(X) a donut;

(XI) a muffin;

(XII) a pastry;

(XIII) a pie;

(XIV) a roll;

(XV) a tart;

(XVI) a torte; or

(XVII) a tortilla.

(c) Notwithstanding Subsection (78)(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

(i) a container; or

(ii) packaging.

(79) "Prescription" means an order, formula, or recipe that is issued:

(a) (i) orally;

(ii) in writing;

(iii) electronically; or

(iv) by any other manner of transmission; and

(b) by a licensed practitioner authorized by the laws of a state.

(80) (a) Except as provided in Subsection (80)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

(i) by the author or other creator of the computer software; and

(ii) to the specifications of a specific purchaser.

(b) "Prewritten computer software" includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

(A) by the author or other creator of the computer software; and

(B) to the specifications of a specific purchaser;

(ii) notwithstanding Subsection (80)(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and

(B) if the modification or enhancement described in Subsection (80)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) Notwithstanding Subsection (80)(b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection (80)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

(ii) separately stated on the invoice or other statement of price provided to the purchaser.

(81) (a) "Private communication service" means a telecommunications service:

(i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and

(ii) regardless of the manner in which the one or more communications channels are connected.

(b) "Private communications service" includes the following provided in connection with the use of one or more communications channels:

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

(iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

(82) (a) Except as provided in Subsection (82)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

(b) "Product transferred electronically" does not include:

(i) an ancillary service;

(ii) computer software; or

(iii) a telecommunications service.

[~~(82)~~] (83) (a) "Prosthetic device" means a device that is worn on or in the body to:

(i) artificially replace a missing portion of the body;

(ii) prevent or correct a physical deformity or physical malfunction; or

(iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

(i) parts used in the repairs or renovation of a prosthetic device;

(ii) replacement parts for a prosthetic device;

(iii) a dental prosthesis; or

(iv) a hearing aid.

(c) "Prosthetic device" does not include:

(i) corrective eyeglasses; or

(ii) contact lenses.

[~~(83)~~] (84) (a) "Protective equipment" means an item:

(i) for human wear; and

(ii) that is:

(A) designed as protection:

(I) to the wearer against injury or disease; or

(II) against damage or injury of other persons or property; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "protective equipment"; and

(ii) that are consistent with the list of items that constitute "protective equipment" under the agreement.

[~~(84)~~] (85) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:

(i) regardless of:

(A) characteristics;

(B) copyright;

(C) form;

(D) format;

(E) method of reproduction; or

(F) source; and

(ii) made available in printed or electronic format.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "photocopy."

[~~(85)~~] (86) (a) "Purchase price" and "sales price" mean the total amount of consideration:

(i) valued in money; and

(ii) for which tangible personal property, a product transferred electronically, or services are:

(A) sold;

(B) leased; or

(C) rented.

(b) "Purchase price" and "sales price" include:

(i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;

(ii) expenses of the seller, including:

(A) the cost of materials used;

(B) a labor cost;

(C) a service cost;

(D) interest;

(E) a loss;

(F) the cost of transportation to the seller; or

(G) a tax imposed on the seller;

(iii) a charge by the seller for any service necessary to complete the sale; or

(iv) consideration a seller receives from a person other than the purchaser if:

(A) (I) the seller actually receives consideration from a person other than the purchaser; and

(II) the consideration described in Subsection [~~(85)~~] (86)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any

patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(c) "Purchase price" and "sales price" do not include:

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

(C) taken by a purchaser on a sale; and

(D) that is not reimbursed by a third party; or

(ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:

(A) the following from credit extended on the sale of tangible personal property or services:

(I) a carrying charge;

(II) a financing charge; or

(III) an interest charge;

(B) a delivery charge;

(C) an installation charge;

(D) a manufacturer rebate on a motor vehicle; or

(E) a tax or fee legally imposed directly on the consumer.

[~~(86)~~] (87) "Purchaser" means a person to whom:

(a) a sale of tangible personal property is made;

(b) a product is transferred electronically; or

(c) a service is furnished.

[~~(87)~~] (88) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

[~~(88)~~] (89) "Renewable energy" means:

(a) biomass energy;

(b) hydroelectric energy;

(c) geothermal energy;

(d) solar energy; or

(e) wind energy.

[~~(89)~~] (90) (a) "Renewable energy production facility" means a facility that:

(i) uses renewable energy to produce electricity; and

(ii) has a production capacity of 20 kilowatts or greater.

(b) A facility is a renewable energy production facility regardless of whether the facility is:

(i) connected to an electric grid; or

(ii) located on the premises of an electricity consumer.

[~~(90)~~] (91) "Rental" is as defined in Subsection (50).

[~~(91) "Repairs~~] (92) (a) Except as provided in Subsection (92)(b), "repairs or renovations of tangible personal property" means:

[~~(a)~~] (i) a repair or renovation of tangible personal property that is not permanently attached to real property; or

[~~(b)~~] (ii) attaching tangible personal property or a product [~~that is~~] transferred electronically to other tangible personal property if:

(A) the other tangible personal property to which the tangible personal property or product [~~that is~~] transferred electronically is attached is not permanently attached to real property[~~.~~]; and

(B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property is made in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

(b) "Repairs or renovations of tangible personal property" does not include attaching prewritten computer software to other tangible personal property if the other tangible personal property to which the prewritten computer software is attached is not permanently attached to real property.

[~~(92)~~] (93) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

[~~(93)~~] (94) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

(ii) at an institution, including a nursing home or a school, if the telecommunications service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection [~~(93)~~] (94)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

[~~(94)~~] (95) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

[~~(95)~~] (96) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

[~~(96)~~] (97) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

[~~(97)~~] (98) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

(iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

[~~(98)~~] (99) "Sale at retail" is as defined in Subsection [~~(95)~~] (96).

[~~(99)~~] (100) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

[~~(100)~~] (101) "Sales price" is as defined in Subsection [~~(85)~~] (86).

[~~(101)~~] (102) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of a uniform, protective equipment, or sports or recreational equipment that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

(I) food and food ingredients; or

(II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection [~~(101)~~] (102)(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

(C) protective equipment; or

(D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

[~~(102)~~] (103) For purposes of this section and Section 59-12-104, "school":

(a) means:

(i) an elementary school or a secondary school that:

(A) is a:

(I) public school; or

(II) private school; and

(B) provides instruction for one or more grades kindergarten through 12; or

(ii) a public school district; and

(b) includes the Electronic High School as defined in Section 53A-15-1002.

[~~(103)~~] (104) "Seller" means a person that makes a sale, lease, or rental of:

(a) tangible personal property;

(b) a product transferred electronically; or

(c) a service.

[~~(104)~~] (105) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating, processing, research, or development materials" includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection [~~(104)~~] (105)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

[~~(105)~~] (106) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

[~~(106)~~] (107) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

[~~(107)~~] (108) "Solar energy" means the sun used as the sole source of energy for producing electricity.

[~~(108)~~] (109) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "sports or recreational equipment"; and

(ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

[~~(109)~~] (110) "State" means the state of Utah, its departments, and agencies.

[~~(110)~~] (111) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

[~~(111)~~] (112) (a) Except as provided in Subsection [~~(111)~~] (112)(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) "Tangible personal property" includes the following, regardless of whether the item is attached to real property:

(i) a dishwasher;

(ii) a dryer;

(iii) a freezer;

(iv) a microwave;

(v) a refrigerator;

(vi) a stove;

(vii) a washer; or

(viii) an item similar to Subsections [~~(111)~~] (112)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) a hot water heater;

(ii) a water filtration system; or

(iii) a water softener system.

[~~(112)~~] (113) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and require further processing other than mechanical blending before becoming finished petroleum products.

[~~(113)~~] (114) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection [~~(113)~~] (114)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

(i) telecommunications switching or routing equipment, machinery, or software; or

(ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection [~~(113)~~] (114)(a):

(i) a pole;

(ii) software;

(iii) a supplementary power supply;

(iv) temperature or environmental equipment or machinery;

(v) test equipment;

(vi) a tower; or

(vii) equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(113)~~] (114)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection [~~(113)~~] (114)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(113)~~] (114)(b)(i) through (vi).

[~~(114)~~] (115) "Telecommunications equipment, machinery, or software required for 911 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

[~~(115)~~] (116) "Telecommunications maintenance or repair equipment, machinery, or software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

(a) telecommunications enabling or facilitating equipment, machinery, or software;

(b) telecommunications switching or routing equipment, machinery, or software; or

(c) telecommunications transmission equipment, machinery, or software.

[~~(116)~~] (117) (a) "Telecommunications service" means the electronic conveyance, routing, or

transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

(i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:

(A) on the code, form, or protocol of the content;

(B) for the purpose of electronic conveyance, routing, or transmission; and

(C) regardless of whether the service:

(I) is referred to as voice over Internet protocol service; or

(II) is classified by the Federal Communications Commission as enhanced or value added;

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

(i) advertising, including directory advertising;

(ii) an ancillary service;

(iii) a billing and collection service provided to a third party;

(iv) a data processing and information service if:

(A) the data processing and information service allows data to be:

(I) (Aa) acquired;

(Bb) generated;

(Cc) processed;

(Dd) retrieved; or

(Ee) stored; and

(II) delivered by an electronic transmission to a purchaser; and

(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) installation or maintenance of the following on a customer's premises:

(A) equipment; or

(B) wiring;

(vi) Internet access service;

(vii) a paging service;

(viii) a product transferred electronically, including:

(A) music;

(B) reading material;

(C) a ring tone;

(D) software; or

(E) video;

(ix) a radio and television audio and video programming service:

(A) regardless of the medium; and

(B) including:

(I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

(II) cable service as defined in 47 U.S.C. Sec. 522(6); or

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

(x) a value-added nonvoice data service; or

(xi) tangible personal property.

[~~(117)~~] (118) (a) "Telecommunications service provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; and

(ii) engages in an activity described in Subsection [~~(117)~~] (118)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection [~~(117)~~] (118)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

[~~(118)~~] (119) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection [~~(118)~~] (119)(b) if that item is purchased or leased primarily for switching or routing:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection [~~(118)~~] (119)(a):

(i) a bridge;

(ii) a computer;

(iii) a cross connect;

(iv) a modem;

(v) a multiplexer;

(vi) plug in circuitry;

(vii) a router;

(viii) software;

(ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(118)~~] (119)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection [~~(118)~~] (119)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(118)~~] (119)(b)(i) through (ix).

[~~(119)~~] (120) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection [~~(119)~~] (120)(a):

(i) an amplifier;

(ii) a cable;

(iii) a closure;

(iv) a conduit;

(v) a controller;

(vi) a duplexer;

(vii) a filter;

(viii) an input device;

(ix) an input/output device;

(x) an insulator;

(xi) microwave machinery or equipment;

(xii) an oscillator;

(xiii) an output device;

(xiv) a pedestal;

(xv) a power converter;

(xvi) a power supply;

(xvii) a radio channel;

(xviii) a radio receiver;

(xix) a radio transmitter;

(xx) a repeater;

(xxi) software;

(xxii) a terminal;

(xxiii) a timing unit;

(xxiv) a transformer;

(xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection [~~(119)~~] (120)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (xxv).

[~~(120)~~] (121) "Tobacco" means:

(a) a cigarette;

(b) a cigar;

(c) chewing tobacco;

(d) pipe tobacco; or

(e) any other item that contains tobacco.

[~~(121)~~] (122) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

[~~(122)~~] (123) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

[~~(123)~~] (124) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

(i) code;

(ii) content;

(iii) form; or

(iv) protocol.

[~~(124)~~] (125) (a) Subject to Subsection [~~(124)~~] (125)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

(i) an aircraft as defined in Section 72-10-102;

(ii) a vehicle as defined in Section 41-1a-102;

(iii) an off-highway vehicle as defined in Section 41-22-2; or

(iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

(i) a vehicle described in Subsection [~~(124)~~] (125)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

[~~(125)~~] (126) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection [~~(124)~~] (125).

[~~(126)~~] (127) (a) "Vertical service" means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

(A) identify a caller; and

(B) manage multiple calls and call connections.

(b) "Vertical service" includes an ancillary service that allows a customer to manage a conference bridging service.

[~~(127)~~] (128) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) "Voice mail service" does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

[~~(128)~~] (129) (a) Except as provided in Subsection [~~(128)~~] (129)(b), "waste energy facility" means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

(A) tires;

(B) waste coal; or

(C) oil shale; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) "Waste energy facility" does not include a facility that incinerates:

(i) municipal solid waste;

(ii) hospital waste as defined in 40 C.F.R. 60.51c; or

(iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

[~~(129)~~] (130) "Watercraft" means a vessel as defined in Section 73-18-2.

[~~(130)~~] (131) "Wind energy" means wind used as the sole source of energy to produce electricity.

[~~(131)~~] (132) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

Section 2. Section 59-12-102.3 is amended to read:

59-12-102.3. Authority to enter into agreement -- Delegates.

(1) The commission may apply to the governing board for the state to become a party to the agreement.

(2) If the state becomes a party to the agreement, the commission may:

(a) establish standards for certification of a:

(i) certified automated system; and

(ii) certified service provider;

(b) act jointly with other states that are parties to the agreement to establish performance standards for multistate sellers; and

(c) take other actions reasonably required to implement provisions of the agreement:

(i) if those actions are not in conflict with statute; and

(ii) subject to Subsection (1)(c)(i), including:

(A) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopting administrative rules; and

(B) in furtherance of the agreement, jointly procuring goods or services with other states that are parties to the agreement.

(3) Subject to Subsection (4), delegates shall be appointed to the governing board of the agreement to:

(a) assist in implementing the provisions of the agreement; and

(b) address other matters as determined by the governing board.

(4) Delegates shall be appointed as follows:

[~~(a) one delegate shall be a member of the House of Representatives appointed by the speaker of the House of Representatives;~~]

[~~(b) one delegate shall be a member of the Senate appointed by the president of the Senate; and~~]

(a) two delegates shall be legislators appointed by mutual consent of the speaker of the House of Representatives and the president of the Senate; and

[~~(c)~~] (b) two delegates shall be appointed by the governor, at least one of whom shall be from the commission.

Section 3. Section 59-12-103 is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product [~~that:~~] transferred electronically; or

[~~(I) is transferred electronically; and~~]

[~~(II) would be subject to a tax under this chapter if the product was transferred in a manner other than electronically; or~~]

(B) of a repair or renovation of a product [~~that:~~] transferred electronically; and

[~~(I) is transferred electronically; and~~]

[~~(II) would be subject to a tax under this chapter if the product was transferred in a manner other than electronically; and~~]

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(f) (i) A tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease if the billing period for the transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

(iii) the tax imposed by Subsection (2)(c)(ii); and

(iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) $17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than $1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) $17,500,000.

(b) (i) The first $500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), $150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) Any unexpended monies described in Subsection (5)(d) that remain in the Water Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

(f) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as

dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(g) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(f) over $150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in the Transportation Fund created by Section 72-2-102.

(7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies, beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under Subsection (7)(b), when the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the Division of Finance shall deposit $55,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal year beginning on or after July 1, 2009, the Division of Finance shall annually deposit $90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall annually deposit $90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, $533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

(11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii), and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1) to be expended to address chokepoints in construction management.

(b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into the Transportation Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

Section 4. Section 59-12-106 is amended to read:

59-12-106. Definitions -- Sales and use tax license requirements -- Penalty -- Application process and requirements -- No fee -- Bonds -- Presumption of taxability -- Exemption certificates -- Exemption certificate license number to accompany contract bids.

(1) As used in this section:

(a) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this chapter for an applicant; and

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);

(D) is a partner of the applicant described in Subsection (1)(c)(i);

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this chapter for a licensee; and

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) (a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

(b) The license described in Subsection (2)(a):

(i) shall be granted and issued by the commission;

(ii) is not assignable;

(iii) is valid only for the person in whose name the license is issued;

(iv) is valid until:

(A) the person described in Subsection (2)(b)(iii):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the license is revoked by the commission; and

(v) subject to Subsection (2)(d), shall be granted by the commission only upon an application that:

(A) states the name and address of the applicant; and

(B) provides other information the commission may require.

(c) At the time an applicant makes an application under Subsection (2)(b)(v), the commission shall notify the applicant of the responsibilities and liability of a business owner successor under Section 59-12-112.

(d) The commission shall review an application and determine whether the applicant:

(i) meets the requirements of this section to be issued a license; and

(ii) is required to post a bond with the commission in accordance with Subsections (2)(e) and (f) before the applicant may be issued a license.

(e) (i) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(A) a license under this section was revoked for a delinquency under this chapter for:

(I) the applicant;

(II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or

(B) there is a delinquency in paying a tax under this chapter for:

(I) the applicant;

(II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter.

(ii) If the commission determines it is necessary to ensure compliance with this chapter, the commission may require a licensee to:

(A) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (2)(f); or

(B) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

(f) (i) A bond required by Subsection (2)(e) shall be:

(A) executed by:

(I) for an applicant, the applicant as principal, with a corporate surety; or

(II) for a licensee, the licensee as principal, with a corporate surety; and

(B) payable to the commission conditioned upon the faithful performance of all of the requirements of this chapter including:

(I) the payment of any tax under this chapter;

(II) the payment of any:

(Aa) penalty as provided in Section 59-1-401; or

(Bb) interest as provided in Section 59-1-402; or

(III) any other obligation of the:

(Aa) applicant under this chapter; or

(Bb) licensee under this chapter.

(ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the amount of a bond required by Subsection (2)(e) on the basis of:

(A) commission estimates of:

(I) an applicant's tax liability under this chapter; or

(II) a licensee's tax liability under this chapter; and

(B) any amount of a delinquency described in Subsection (2)(f)(iii).

(iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection (2)(f)(ii)(B):

(A) for an applicant, the amount of the delinquency is the sum of:

(I) the amount of any delinquency that served as a basis for revoking the license under this section of:

(Aa) the applicant;

(Bb) a fiduciary of the applicant; or

(Cc) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or

(II) the amount of tax that any of the following owe under this chapter:

(Aa) the applicant;

(Bb) a fiduciary of the applicant; and

(Cc) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or

(B) for a licensee, the amount of the delinquency is the sum of:

(I) the amount of any delinquency that served as a basis for revoking the license under this section of:

(Aa) the licensee;

(Bb) a fiduciary of the licensee; or

(Cc) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this chapter; or

(II) the amount of tax that any of the following owe under this chapter:

(Aa) the licensee;

(Bb) a fiduciary of the licensee; and

(Cc) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this chapter.

(iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection (2)(e) may not:

(A) be less than $25,000; or

(B) exceed $500,000.

(g) If business is transacted at two or more separate places by one person, a separate license for each place of business is required.

(h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the license of any licensee violating any provisions of this chapter.

(ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the licensee has complied with the requirements of this chapter, including:

(A) paying any:

(I) tax due under this chapter;

(II) penalty as provided in Section 59-1-401; or

(III) interest as provided in Section 59-1-402; and

(B) posting a bond in accordance with Subsections (2)(e) and (f).

(i) Any person required to collect a tax under this chapter within this state without having secured a license to do so is guilty of a criminal violation as provided in Section 59-1-401.

(j) A license:

(i) is not required for any person engaged exclusively in the business of selling commodities that are exempt from taxation under this chapter; and

(ii) shall be issued to the person by the commission without a license fee.

(3) (a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate:

(i) bearing the name and address of the purchaser; and

(ii) providing that the property, item, or service was exempted under Section 59-12-104.

(b) An exemption certificate described in Subsection (3)(a):

(i) shall contain information as prescribed by the commission; and

(ii) if a paper exemption certificate is used, shall be signed by the purchaser.

(c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable to collect a tax under this chapter if the seller or certified service provider obtains within 90 days after a transaction is complete:

(A) an exemption certificate containing the information required by Subsections (3)(a) and (b); or

(B) the information required by Subsections (3)(a) and (b).

(ii) A seller or certified service provider that does not obtain the exemption certificate or information described in Subsection (3)(c)(i) with respect to a transaction [~~may, within~~] is allowed 120 days after the commission requests the seller or certified service provider to substantiate the exemption to:

(A) establish that the transaction is not subject to taxation under this chapter by a means other than providing an exemption certificate containing the information required by Subsections (3)(a) and (b); or

(B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the information required by Subsections (3)(a) and (b), taken in good faith.

(iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good faith if the exemption certificate claims an exemption that:

(A) was allowed by statute on the date of the transaction in the jurisdiction of the location of the transaction;

(B) could be applicable to that transaction; and

(C) is reasonable for the purchaser's type of business.

(d) Except as provided in Subsection (3)(e), a seller or certified service provider that takes an exemption certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction is not liable to collect a tax under this chapter[~~: (i)~~] on that transaction[~~; and~~].

[~~(ii) if the commission or a court of competent jurisdiction subsequently determines that the purchaser improperly claimed the exemption.~~]

(e) Subsection (3)(d) does not apply to a seller or certified service provider [~~that:~~] if the commission establishes through an audit that the seller or certified service provider:

[~~(i) fraudulently fails to collect a tax under this chapter;~~]

[~~(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax under this chapter; or~~]

[~~(iii) accepts an exemption certificate for an exemption that is allowed on the basis of the entity claiming the exemption if:~~]

[~~(A) the purchaser receives the tangible personal property, product, or service that is the subject of the exemption certificate at a location operated by the seller; and~~]

[~~(B) the exemption certificate states that the tangible personal property, product, or service is not exempt from taxation under this chapter.~~]

(i) knew or had reason to know at the time the purchaser provided the seller or certified service provider the information described in Subsection (3)(a) or (b) that the information related to the exemption claimed was materially false; or

(ii) otherwise knowingly participated in activity intended to purposefully evade the tax due on the transaction.

(f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if there is a recurring business relationship between a seller or certified service provider and a purchaser, the commission may not require the seller or certified service provider to:

(A) renew an exemption certificate;

(B) update an exemption certificate; or

(C) update a data element of an exemption certificate.

(ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no more than a 12-month period elapses between transactions between a seller or certified service provider and a purchaser.

(iii) If there is a recurring business relationship between a seller or certified service provider and a purchaser, the commission shall require an exemption certificate the seller or certified service provider takes from the purchaser to meet the requirements of Subsections (3)(a) and (b).

(4) A person filing a contract bid with the state or a political subdivision of the state for the sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1) shall include with the bid the number of the license issued to that person under Subsection (2).

Section 5. Section 59-12-128 is amended to read:

59-12-128. Amnesty.

(1) As used in this section, "amnesty" means that a seller is not required to pay the following amounts that the seller would otherwise be required to pay:

(a) a tax, fee, or charge under:

(i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(iii) Section 19-6-714;

(iv) Section 19-6-805;

(v) Section 69-2-5;

(vi) Section 69-2-5.5;

(vii) Section 69-2-5.6; or

(viii) this chapter;

(b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

(c) interest on a tax, fee, or charge described in Subsection (1)(a).

(2) [~~The~~] (a) Except as provided in Subsections (2)(b) and (3) and subject to Subsections (4) and (5), the commission shall grant a seller amnesty [~~under this section~~] if the seller:

[~~(a) was not licensed under Section 59-12-106 at any time during the 12-month period prior to the effective date of the state's participation in the agreement;~~]

[~~(b)~~] (i) obtains a license under Section 59-12-106 [~~within a 12-month period after the effective date of the state's participation in the agreement~~]; and

[~~(c)~~] (ii) is registered under the agreement.

(b) The commission is not required to grant a seller amnesty under this section beginning 12 months after the date the state becomes a full member under the agreement.

(3) A seller may not receive amnesty under this section for a tax, fee, or charge:

(a) the seller collects;

(b) the seller remits to the commission;

(c) that the seller is required to remit to the commission on the seller's purchase; or

(d) arising from a transaction that occurs within a time period that is under audit by the commission if:

(i) the seller receives notice of the commencement of the audit prior to obtaining a license under Section 59-12-106; and

(ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or

(B) the seller has not exhausted all administrative and judicial remedies in connection with the audit described in Subsection (3)(d)(i).

(4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a seller under this section:

(i) applies to the time period during which the seller is not licensed under Section 59-12-106; and

(ii) remains in effect if, for a period of three years, the seller:

(A) remains registered under the agreement;

(B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge described in Subsection (1)(a); and

(C) remits to the commission the taxes, fees, and charges the seller collects in accordance with Subsection (4)(a)(ii)(B).

(b) The commission may not grant a seller amnesty under this section if, with respect to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this section, the seller commits:

(i) fraud; or

(ii) an intentional misrepresentation of a material fact.

(5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission shall require the seller to pay the amounts described in Subsection (1) that the seller would have otherwise been required to pay.

(b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an amount in accordance with Subsection (5)(a), the time period for the commission to make an assessment under Section 59-1-1410 is extended for a time period beginning on the date the seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

Section 6. Section 59-12-211 is amended to read:

59-12-211. Definitions -- Location of certain transactions -- Reports to commission -- Direct payment provision for a seller making certain purchases -- Exceptions.

(1) As used in this section:

(a) (i) "Receipt" and "receive" mean:

(A) taking possession of tangible personal property;

(B) making first use of a service; or

(C) for a product transferred electronically, the earlier of:

(I) taking possession of the product transferred electronically; or

(II) making first use of the product transferred electronically.

(ii) "Receipt" and "receive" do not include possession by a shipping company on behalf of a purchaser.

(b) "Transportation equipment" means:

(i) a locomotive or rail car that is used to carry a person or property in interstate commerce;

(ii) a truck or truck-tractor:

(A) with a gross vehicle weight rating of 10,001 pounds or more;

(B) registered under Section 41-1a-301; and

(C) operated under the authority of a carrier authorized and certificated:

(I) by the United States Department of Transportation or another federal authority; and

(II) to engage in carrying a person or property in interstate commerce;

(iii) a trailer, semitrailer, or passenger bus that is:

(A) registered under Section 41-1a-301; and

(B) operated under the authority of a carrier authorized and certificated:

(I) by the United States Department of Transportation or another federal authority; and

(II) to engage in carrying a person or property in interstate commerce;

(iv) an aircraft that is operated by an air carrier authorized and certificated:

(A) by the United States Department of Transportation or another federal or foreign authority; and

(B) to engage in carrying a person or property in interstate commerce; or

(v) a container designed for use on, or a component part attached or secured on, an item of equipment listed in Subsections (1)(b)(i) through (iv).

(2) Except as provided in Subsections (8) and [~~(13)~~] (14), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is received by a purchaser at a business location of a seller, the location of the transaction is the business location of the seller.

(3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and [~~(13)~~] (14), if tangible personal property, a product transferred electronically, or a service that is

subject to taxation under this chapter is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property or service.

(4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and [~~(13)~~] (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location indicated by an address for or other information on the purchaser if:

(a) the address or other information is available from the seller's business records; and

(b) use of the address or other information from the seller's records does not constitute bad faith.

(5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and [~~(13)~~] (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the location indicated by an address for the purchaser if:

(i) the address is obtained during the consummation of the transaction; and

(ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

(b) An address used under Subsection (5)(a) includes the address of a purchaser's payment instrument if no other address is available.

(6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and [~~(13)~~] (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the location:

(a) indicated by the address from which:

(i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is subject to taxation under this chapter, the tangible personal property is shipped;

(ii) for computer software delivered electronically or for a product transferred electronically that is subject to taxation under this chapter, the computer software or product transferred electronically is first available for transmission by the seller; or

(iii) for a service that is subject to taxation under this chapter, the service is provided; or

(b) as determined by the seller with respect to a prepaid wireless calling service:

(i) provided in Subsection (6)(a)(iii); or

(ii) associated with the mobile telephone number.

(7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP Code that is located within two or more local taxing jurisdictions.

(b) If the location of a transaction determined under Subsections (3) through (6) is in a shared ZIP Code, the location of the transaction is:

(i) if there is only one local taxing jurisdiction that imposes the lowest agreement combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest agreement combined tax rate; or

(ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax rate for the shared ZIP Code, the local taxing jurisdiction that:

(A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

(B) has located within the local taxing jurisdiction the largest number of street addresses within the shared ZIP Code.

(c) Notwithstanding any provision under this chapter authorizing or requiring the imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales and use tax imposed under this chapter at the lowest agreement combined tax rate imposed within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) providing for the circumstances under which a seller has exercised due diligence in determining the nine-digit ZIP Code for an address; or

(ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction within which a transaction is located if a seller is unable to determine the local taxing jurisdiction within which the transaction is located under Subsection (7)(b).

(8) The location of a transaction made with a direct payment permit described in Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or service by the purchaser occurs.

(9) The location of a purchase of direct mail is the location determined in accordance with Section 59-12-123.

(10) (a) Except as provided in Subsection (10)(b), the location of a transaction determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within which:

(i) the nine-digit ZIP Code assigned to the location determined under Subsections (3) through (6), (8), or (9) is located; or

(ii) the five-digit ZIP Code assigned to the location determined under Subsections (3) through (6), (8), or (9) is located if:

(A) a nine-digit ZIP Code is not available for the location determined under Subsections (3) through (6), (8), or (9); or

(B) after exercising due diligence, a seller or certified service provider is unable to determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6), (8), or (9).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission

may make rules for determining the local taxing jurisdiction within which a transaction is located if a seller or certified service provider is unable to determine the local taxing jurisdiction within which the transaction is located under Subsection (10)(a).

(11) (a) As used in this Subsection (11), "florist delivery transaction" means a transaction commenced by a florist that transmits an order:

(i) by:

(A) telegraph;

(B) telephone; or

(C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

(ii) for delivery to another place:

(A) in this state; or

(B) outside this state.

(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and ending on December 31, 2009, the location of a florist delivery transaction is the business location of the florist that commences the florist delivery transaction.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) define:

(A) "business location"; and

(B) "florist";

(ii) define what constitutes a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

(iii) provide procedures for determining when a transaction is commenced.

(12) (a) Notwithstanding any other provision of this section and except as provided in Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser, the location of the transaction is determined in accordance with Subsections (4) and (5).

(b) If a purchaser uses computer software described in Subsection (12)(a) at more than one location, the location of the transaction shall be determined in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(12)~~] (13) (a) A tax collected under this chapter shall be reported to the commission on a form that identifies the location of each transaction that occurs during the return filing period.

(b) The form described in Subsection [~~(12)~~] (13)(a) shall be filed with the commission as required under this chapter.

[~~(13)~~] (14) This section does not apply to:

(a) amounts charged by a seller for:

(i) telecommunications service except for a prepaid calling service or a prepaid wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

(ii) the retail sale or transfer of:

(A) a motor vehicle other than a motor vehicle that is transportation equipment;

(B) an aircraft other than an aircraft that is transportation equipment;

(C) a watercraft;

(D) a modular home;

(E) a manufactured home; or

(F) a mobile home; or

(iii) except as provided in Section 59-12-214, the lease or rental of tangible personal property other than tangible personal property that is transportation equipment;

(b) a tax a person pays in accordance with Subsection 59-12-107(1)(d); or

(c) a retail sale of tangible personal property or a product transferred electronically if:

(i) the seller receives the order for the tangible personal property or product transferred electronically in this state;

(ii) receipt of the tangible personal property or product transferred electronically by the purchaser or the purchaser's donee occurs in this state;

(iii) the location where receipt of the tangible personal property or product transferred electronically by the purchaser occurs is determined in accordance with Subsections (3) through (5); and

(iv) at the time the seller receives the order, the record keeping system that the seller uses to calculate the proper amount of tax imposed under this chapter captures the location where the order is received.

Section 7. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 286
H. B. 50
Passed March 1, 2011
Approved March 25, 2011
Effective May 10, 2011

SCHOOL TERMINATION PROCEDURES MODIFICATIONS

Chief Sponsor: Ronda Rudd Menlove
Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends the Utah Orderly School Termination Procedures Act, which establishes procedures for the termination of employees of a school district or the Utah Schools for the Deaf and the Blind.

Highlighted Provisions:

This bill:

- clarifies that a school district or the Utah Schools for the Deaf and the Blind is not required to provide a cause for not offering a contract to a provisional employee; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-8-104, as last amended by Laws of Utah 2007, Chapter 348

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

Section 1. Section 53A-8-104 is amended to read:

53A-8-104. Dismissal procedures.

(1) [~~The~~] A district shall provide employees with a written statement [~~of~~] specifying:

(a) the causes under which a career employee's contract may not be renewed or continued beyond the [~~then-current~~] current school year[~~, under which a contract of each class of personnel may not be renewed or continued beyond the then-current school year, and under which a contract can be otherwise~~];

(b) the causes under which a career or provisional employee's contract may be terminated during the contract term[~~,~~]; and

(c) the orderly dismissal procedures [~~which~~] that are used by the district in cases of contract termination, discontinuance, or nonrenewal.

(2) [~~(a)~~] If the district intends to terminate a career employee's contract during its term for reasons of unsatisfactory performance or discontinue a career employee's contract beyond the [~~then~~] current school year for reasons of unsatisfactory performance, the unsatisfactory performance must be documented in at least two evaluations conducted at any time within the preceding three years in accordance with district policies or practices.

[~~(b) The~~] (3) (a) A district shall notify a career employee, at least 30 days prior to issuing under Subsection (3)(d) notice of intent not to renew or continue the career employee's contract beyond the [~~then-current~~] current school year, that continued employment is in question and the reasons for the anticipated nonrenewal or discontinuance.

(b) If a career employee receives a notice under Subsection (3)(a) that continued employment is in question, the board:

[~~(c) The board~~] (i) shall give the career employee an opportunity to correct the problem in accordance with the district evaluation policies[~~.~~]; and

[~~(d) The board~~] (ii) may grant the career employee assistance to correct the deficiencies, including informal conferences and the services of school personnel within the district [~~consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b)~~].

[~~(3) (a) If the~~] (c) If a career employee does not correct the [~~problem~~] deficiencies as determined in accordance with the evaluation and personnel policies of the district and the district intends to not renew or discontinue the contract of employment of [~~a~~] the career employee at the end of the [~~then-current~~] current school year, it shall give notice of that intention to the employee.

[~~(b)~~] (d) The district shall issue the notice at least 30 days before the end of the career employee's contract term.

[~~(4) A district shall notify a provisional~~]

(4) (a) A district is not required to provide a cause for not offering a contract to a provisional employee.

(b) If a district intends to not offer a contract for a subsequent term of employment to a provisional employee, the district shall give notice of that intention to the employee at least 60 days before the end of the provisional employee's contract [~~if the employee will not be offered a contract for a subsequent term of employment~~] term.

(5) In the absence of a notice, an employee is considered employed for the next contract term with a salary based upon the salary schedule applicable to the class of employee into which the individual falls.

(6) If [~~the~~] a district intends to not renew or discontinue the contract of a career employee or to terminate a career or provisional employee's contract during the contract term:

(a) the district shall give written notice of the intent to the employee;

(b) the notice shall be served by personal delivery or by certified mail addressed to the [~~individual's~~] employee's last-known address as shown on the records of the district;

(c) except as provided under Subsection (3)[~~(b)~~], the district shall give notice at least 30 days prior to the proposed date of termination;

(d) the notice shall state the date of termination and the detailed reasons for termination;

(e) the notice shall advise the [~~individual~~] employee that [~~he~~] the employee has a right to a fair hearing and that the hearing is waived if it is not requested within 15 days after the notice of termination was either personally delivered or mailed to the [~~individual's~~] employee's most recent address shown on the district's personnel records; and

(f) the notice shall state that failure of the employee to request a hearing in accordance with procedures set forth in the notice constitutes a waiver of that right and that the district may then proceed with termination without further notice.

(7) (a) The procedure under which a contract is terminated during its term may include a provision under which the active service of the employee is suspended pending a hearing if it appears that the continued employment of the individual may be harmful to students or to the district.

[~~(8) (a)~~] (b) Suspension pending a hearing may be without pay if an authorized representative of the district determines, after providing the employee with an opportunity for an informal conference to discuss the allegations, that it is more likely than not that the allegations against the employee are true [~~and will result in termination~~].

[~~(b)~~] (c) If termination is not subsequently ordered, the employee shall receive back pay for the period of suspension without pay.

[~~(9)~~] (8) The procedure under which an employee's contract is terminated during its term shall provide for a written notice of suspension or final termination including findings of fact upon which the action is based [~~if the suspension or termination is for cause~~].

CHAPTER 287
H. B. 73
Passed March 3, 2011
Approved March 25, 2011
Effective May 10, 2011

MOTOR CARRIER TRANSPORTATION CONTRACT INDEMNITY AGREEMENTS

Chief Sponsor: Don L. Ipson
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions relating to the unenforceability of certain motor carriertransportation contract indemnity agreements.

Highlighted Provisions:

This bill:

- provides definitions;
- provides that any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify or hold harmless the other party against liability for death, personal injury, or property damage caused in whole or in part by the negligence or intentional acts or omissions of the other party is void; and
- provides that this provision does not affect any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify another person against liability for death, personal injury, or property damage that arises out of the fault of the indemnitor or the indemnitor's agents or representatives.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-8-6, Utah Code Annotated 1953

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

Section 1. Section 13-8-6 is enacted to read:

13-8-6. Definitions -- Motor carrier indemnity agreements void.

(1) As used in this section, "motor carrier transportation contract" means any written agreement for:

(a) the transportation of personal property for compensation or hire;

(b) entry on real property for the purpose of packing, loading, unloading, or transporting personal property for compensation or hire; or

(c) a service incidental to an activity described in Subsection (1)(a) or (b) including storage of personal property for compensation or hire.

(2) Except as provided in Subsection (3), any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify or hold harmless the other party against liability for death, personal injury, or property damage caused in whole or in part by the negligence or intentional acts or omissions of the other party is void.

(3) This section does not affect any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify another person against liability for death, personal injury, or property damage that arises out of the fault of:

(a) the indemnitor; or

(b) the indemnitor's agents or representatives.

CHAPTER 288
H. B. 82
Passed March 3, 2011
Approved March 25, 2011
Effective July 1, 2011

SALES AND USE TAXES ON CERTAIN LODGING RELATED PURCHASES

Chief Sponsor: Todd E. Kiser
Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill addresses sales and use taxes on certain lodging related purchases.

Highlighted Provisions:

This bill:

- defines terms;
- provides procedures for claiming a sales and use tax exemption for certain lodging related purchases;
- grants rulemaking authority to the State Tax Commission;
- requires the State Tax Commission to collect the transient room taxes; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-12-104, as last amended by Laws of Utah 2010, Chapters 88, 209, and 364
59-12-302, as last amended by Laws of Utah 2008, Chapter 384
59-12-354, as last amended by Laws of Utah 2008, Chapter 384

ENACTS:

59-12-104.6, Utah Code Annotated 1953

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

Section 1. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

(i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or

(b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103;

(3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

(i) the proceeds of each sale do not exceed $1; and

(ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and

(b) Subsection (3)(a) applies to:

(i) food and food ingredients; or

(ii) prepared food;

(4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

(i) alcoholic beverages;

(ii) food and food ingredients; or

(iii) prepared food;

(b) sales of tangible personal property or a product transferred electronically:

(i) to a passenger;

(ii) by a commercial airline carrier; and

(iii) during a flight for in-flight consumption or in-flight use by the passenger; or

(c) services related to Subsection (4)(a) or (b);

(5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:

(A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(II) for:

(Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;

(Bb) renovation of an aircraft; or

(Cc) repair of an aircraft; or

(B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or

(ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and

(b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

(ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before September 30, 2011;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;

(b) if a seller that sells at the same business location assisted cleaning or washing of tangible personal property and cleaning or washing of tangible personal property that is not assisted cleaning or washing of tangible personal property, the exemption described in Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or washing of the tangible personal property; and

(c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for sales of assisted cleaning or washing of tangible personal property;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the vehicle to the borders of this state; or

(B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

(ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the item described in Subsection (12)(c) is not available to the general public; or

(B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

(i) a medical facility; or

(ii) a nursing facility; and

(c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property or a product transferred electronically by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property or product transferred electronically by that person; and

(ii) not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(b) this Subsection (13) does not apply if:

(i) the sale is one of a series of sales of a character to indicate that the person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(ii) the person holds that person out as regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(iii) the person sells an item of tangible personal property or product transferred electronically that the person purchased as a sale that is exempt under Subsection (25); or

(iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:

(A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing the circumstances under which:

(i) a person is regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(ii) a sale of tangible personal property or a product transferred electronically is one of a series of sales of a character to indicate that a person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically; or

(iii) a person holds that person out as regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration facility, of the following:

(i) machinery and equipment that:

(A) are used:

(I) for a manufacturing facility except for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(54)(b):

(Aa) in the manufacturing process;

(Bb) to manufacture an item sold as tangible personal property; and

(Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(a)(i)(A)(I) in the state; or

(II) for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(54)(b):

(Aa) to process an item sold as tangible personal property; and

(Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(a)(i)(A)(II) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) have an economic life of three or more years; and

(B) are used:

(I) for a manufacturing facility except for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(54)(b):

(Aa) in the manufacturing process; and

(Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the state; or

(II) for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(54)(b):

(Aa) to process an item sold as tangible personal property; and

(Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the state;

(b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006, of the following:

(i) machinery and equipment that:

(A) are used:

(I) in the manufacturing process;

(II) to manufacture an item sold as tangible personal property; and

(III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(b) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) are used:

(I) in the manufacturing process; and

(II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

(B) have an economic life of three or more years;

(c) amounts paid or charged for a purchase or lease made on or after January 1, 2008, by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(i) machinery and equipment that:

(A) are used:

(I) (Aa) in the production process, other than the production of real property; or

(Bb) in research and development; and

(II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) have an economic life of three or more years; and

(B) are used in:

(I) (Aa) the production process, except for the production of real property; and

(Bb) an establishment described in this Subsection (14)(c) in the state; or

(II) (Aa) research and development; and

(Bb) in an establishment described in this Subsection (14)(c) in the state;

(d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010, but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(A) machinery and equipment that:

(I) are used in the operation of the web search portal;

(II) have an economic life of three or more years; and

(III) are used in a new or expanding establishment described in this Subsection (14)(d) in the state; and

(B) normal operating repair or replacement parts that:

(I) are used in the operation of the web search portal;

(II) have an economic life of three or more years; and

(III) are used in a new or expanding establishment described in this Subsection (14)(d) in the state; or

(ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(A) machinery and equipment that:

(I) are used in the operation of the web search portal; and

(II) have an economic life of three or more years; and

(B) normal operating repair or replacement parts that:

(I) are used in the operation of the web search portal; and

(II) have an economic life of three or more years;

(e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:

(i) shall by rule define the term "establishment"; and

(ii) may by rule define what constitutes:

(A) processing an item sold as tangible personal property;

(B) the production process, except for the production of real property;

(C) research and development; or

(D) a new or expanding establishment described in Subsection (14)(d) in the state; and

(f) on or before October 1, 2011, and every five years after October 1, 2011, the commission shall:

(i) review the exemptions described in this Subsection (14) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) an estimate of the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

(A) a government identification tag placed on the tooling, equipment, or parts; or

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(i) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(ii) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission; and

(b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the following items of tangible personal property or products transferred electronically traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

(A) becomes part of real estate; or

(B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is incidental to farming:

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm, or other agricultural produce is sold by:

(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce;

(b) an employee of the producer described in Subsection (20)(a); or

(c) a member of the immediate family of the producer described in Subsection (20)(a);

(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of the purchase;

(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

(D) not used in conducting business in this state; and

(ii) for:

(A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of the product for a purpose for which the product is designed occurs outside of this state;

(B) a boat, the boat is registered outside of this state; or

(C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (24)(a) does not apply to:

(i) a lease or rental of a product; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (63); or

(iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(28) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state; or

(B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state;

(31) sales of aircraft manufactured in Utah;

(32) amounts paid for the purchase of telecommunications service for purposes of providing telecommunications service;

(33) sales, leases, or uses of the following:

(a) a vehicle by an authorized carrier; or

(b) tangible personal property that is installed on a vehicle:

(i) sold or leased to or used by an authorized carrier; and

(ii) before the vehicle is placed in service for the first time;

(34) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(35) sales relating to schools and fundraising sales;

(36) sales or rentals of durable medical equipment if:

(a) a person presents a prescription for the durable medical equipment; and

(b) the durable medical equipment is used for home use only;

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

(c) passenger ropeways as defined in Section 72-11-102; or

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

(39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device as defined in Section 59-12-102;

(b) if a seller that sells or rents at the same business location the right to use or operate for amusement, entertainment, or recreation one or more unassisted amusement devices and one or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if the seller separately accounts for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for the assisted amusement devices; and

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for assisted amusement devices;

(41) (a) sales of photocopies by:

(i) a governmental entity; or

(ii) an entity within the state system of public education, including:

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(43) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(44) sales or leases of semiconductor fabricating, processing, research, or development materials regardless of whether the semiconductor fabricating, processing, research, or development materials:

(a) actually come into contact with a semiconductor; or

(b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) sales or uses of electricity, if the sales or uses are:

(a) made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy source, as designated in the tariff by the Public Service Commission of Utah; and

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (47)(a); and

(ii) equivalent to the number of kilowatthours specified in the tariff described in Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(49) sales of water in a:

(a) pipe;

(b) conduit;

(c) ditch; or

(d) reservoir;

(50) sales of currency or coinage that constitute legal tender of the United States or of a foreign nation;

(51) (a) sales of an item described in Subsection (51)(b) if the item:

(i) does not constitute legal tender of any nation; and

(ii) has a gold, silver, or platinum content of 80% or more; and

(b) Subsection (51)(a) applies to a gold, silver, or platinum:

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(52) amounts paid on a sale-leaseback transaction;

(53) sales of a prosthetic device:

(a) for use on or in a human; and

(b) (i) for which a prescription is required; or

(ii) if the prosthetic device is purchased by a hospital or other medical facility;

(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

(i) a motion picture;

(ii) a television program;

(iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

(vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or

(b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:

(i) a live musical performance;

(ii) a live news program; or

(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or

(ii) define:

(A) "commercial distribution";

(B) "live musical performance";

(C) "live news program"; or

(D) "live sporting event";

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a renewable energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (55)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) a wind turbine;

(B) generating equipment;

(C) a control and monitoring system;

(D) a power line;

(E) substation equipment;

(F) lighting;

(G) fencing;

(H) pipes; or

(I) other equipment used for locating a power line or pole; and

(b) this Subsection (55) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new renewable energy production facility; or

(B) the increase in the capacity of a renewable energy production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the renewable energy production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

(B) the increased capacity described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii);

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) generating equipment;

(B) a control and monitoring system;

(C) a power line;

(D) substation equipment;

(E) lighting;

(F) fencing;

(G) pipes; or

(H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new waste energy facility; or

(B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is located in the state;

(B) produces fuel from biomass energy including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as a result of the installation of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the facility described in Subsection (57)(a)(i) is operational; or

(B) the increased capacity described in Subsection (57)(a)(i) is operational;

(58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider; and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iii) telecommunications maintenance or repair equipment, machinery, or software;

(iv) telecommunications switching or routing equipment, machinery, or software; or

(v) telecommunications transmission equipment, machinery, or software;

(62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible personal property or a product transferred electronically that are used in the research and development of coal-to-liquids, oil shale, or tar sands technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (62)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in the research and development of coal-to-liquids, oil shale, and tar sands technology;

(63) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (63)(a)(i)(A); and

(C) used in conducting business in this state; and

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or

(B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (63)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (63)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(64) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

(b) the disposable home medical equipment or supplies are used exclusively by the person to whom the prescription described in Subsection (64)(a) is issued; and

(c) the disposable home medical equipment and supplies are listed as eligible for payment under:

(i) Title XVIII, federal Social Security Act; or

(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(65) sales:

(a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act; or

(b) of tangible personal property to a subcontractor of a public transit district, if the tangible personal property is:

(i) clearly identified; and

(ii) installed or converted to real property owned by the public transit district;

(66) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (66)(b); and

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 9-3-511; and

(70) (a) sales of tangible personal property to an aircraft maintenance, repair, and overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft; or

(b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft.

Section 2. Section 59-12-104.6 is enacted to read:

59-12-104.6. Procedure for claiming a sales and use tax exemption for certain lodging related purchases -- Rulemaking authority -- Applicability of section.

(1) As used in this section:

(a) "Designated establishment within the lodging industry" means an establishment described in NAICS Code 721110 or 721191of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

(b) "Exempt purchaser" means a person that:

(i) makes a lodging related purchase; and

(ii) may claim an exemption from a tax under this chapter for the purchase.

(c) "Lodging related purchase" means the purchase of the following from a seller that is a designated establishment within the lodging industry:

(i) accommodations and services described in Subsection 59-12-103(1)(i); or

(ii) any other tangible personal property, product, or service that is:

(A) purchased as part of a transaction that includes the purchase of accommodations and services described in Subsection (1)(c)(i); and

(B) included on the invoice, bill of sale, or similar document provided to the purchaser of the accommodations and services described in Subsection (1)(c)(i).

(2) Except as provided in Subsection (3), an exempt purchaser that makes a lodging related purchase:

(a) shall pay a tax that would otherwise be imposed under this chapter on the lodging related purchase but for the purchaser being allowed to claim an exemption from a tax under this chapter for the purchase; and

(b) may apply to the commission for a refund of the tax described in Subsection (2)(a) that the purchaser pays.

(3) An exempt purchaser that makes a lodging related purchase may claim an exemption from a tax under this chapter at the point of sale if the exempt purchaser:

(a) is an agency or instrumentality of the United States;

(b) is exempt from a tax under this chapter on a lodging related purchase as authorized by a diplomatic tax exemption card issued by the United States; or

(c) may claim the exemption at the point of sale in accordance with Section 59-12-104.1.

(4) An exempt purchaser that applies to the commission for a refund may not make an application to the commission for a refund more frequently than monthly.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing:

(a) procedures for applying for a refund under this section;

(b) standards for determining and verifying the amount of a lodging related purchase by an exempt purchaser; and

(c) procedures for claiming a refund on a monthly basis.

(6) This section does not apply to amounts taxed by the Navajo Nation that are exempt from sales and use taxes in accordance with Section 59-12-104.2.

Section 3. Section 59-12-302 is amended to read:

59-12-302. Collection of tax -- Administrative fee -- Penalties.

(1) [~~(a)~~] Except as provided in Subsection [~~(1)(b) or (c)~~] (2) or (3), the tax authorized under this part shall be administered, collected, and enforced in accordance with:

[~~(i)~~] (a) the same procedures used to administer, collect, and enforce the tax under:

[~~(A)~~] (i) Part 1, Tax Collection; or

[~~(B)~~] (ii) Part 2, Local Sales and Use Tax Act; and

[~~(ii)~~] (b) Chapter 1, General Taxation Policies.

[~~(b) (i) Notwithstanding Section 59-12-206, each county may collect the tax imposed by the county and need not transmit the tax to the commission or contract with the commission to collect the tax.~~]

[~~(ii)~~] (2) The [~~amount of tax collected shall be reported to the commission as provided in~~] location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

[~~(c)~~] (3) A tax under this part is not subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (6).

[~~(d) (i) If the commission collects a tax under this part, the~~]

(4) (a) The commission:

[~~(A)~~] (i) except as provided in Subsection [~~(1)(d)(i)(B)~~] (4)(a)(ii), shall distribute the revenues [~~generated by~~] collected from the tax to the county within which the revenues were [~~generated~~] collected; and

[~~(B) notwithstanding Subsection (1)(d)(i)(A),~~]

(ii) may retain an amount of tax collected under this part of not to exceed the lesser of:

[~~(I)~~] (A) 1.5%; or

[~~(II)~~] (B) an amount equal to the cost to the commission of administering this part.

[~~(ii)~~] (b) Any amount the commission retains under Subsection [~~(1)(d)(i)(B)~~] (4)(a)(ii) shall be:

[~~(A)~~] (i) placed in the Sales and Use Tax Administrative Fees Account; and

[~~(B)~~] (ii) used as provided in Subsection 59-12-206(2).

[~~(2) (a) The tax ordinance adopted by a county pursuant to Section 59-12-301 may include provisions for the imposition of penalties and interest if a person or entity required to pay a tax under this part fails to timely remit the tax to the collecting agent.~~]

[~~(b) A county legislative body may not establish penalties and interest by ordinance that exceed the penalties and interest rates authorized for the commission in Sections 59-1-401 and 59-1-402.~~]

[~~(3) A county may adopt an ordinance imposing penalties and interest under Subsection (2) only if the county does not contract with the commission to collect the tax.~~]

[~~(4) If a county elects to collect the tax as provided in Subsection (1), the commission shall interpret, audit, and adjudicate the tax imposed under this part.~~]

Section 4. Section 59-12-354 is amended to read:

59-12-354. Collection of tax -- Administrative fee -- Penalties.

(1) Except as provided in Subsections (2) and (3), the tax authorized under this part shall be administered, collected, and enforced in accordance with:

(a) the same procedures used to administer, collect, and enforce the tax under:

(i) Part 1, Tax Collection; or

(ii) Part 2, Local Sales and Use Tax Act; and

(b) Chapter 1, General Taxation Policies.

[~~(2) Notwithstanding Section 59-12-206, a municipality imposing a tax under this part:~~]

[~~(a) may collect the tax and is not required to:~~]

[~~(i) transmit revenues generated by the tax to the commission; or~~]

[~~(ii) contract with the commission to collect the tax;~~]

[~~(b)~~] (2) (a) [~~shall report the revenues it collects to the commission as provided in~~] The location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215[~~; and~~].

[~~(c) subject to the limitations of Subsections (4) and (5), may adopt an ordinance imposing penalties and interest on a person who:~~]

[~~(i) is required to pay the tax under this part; and~~]

[~~(ii) does not remit the tax to the collecting agent in a timely manner.~~]

[~~(d)~~] (b) (i) [~~If the commission collects a tax under this part, the~~] The commission:

(A) except as provided in Subsection (2)[~~(d)~~](b)(i)(B), shall distribute the revenues [~~generated by~~] collected from the tax to the municipality within which the revenues were [~~generated~~] collected; and

(B) [~~notwithstanding Subsection (2)(d)(i)(A),~~] may retain an amount of tax collected under this part of not to exceed the lesser of:

(I) 1.5%; or

(II) an amount equal to the cost to the commission of administering this part.

(ii) Any amount the commission retains under Subsection (2)[~~(d)~~](b)(i)(B) shall be:

(A) placed in the Sales and Use Tax Administrative Fees Account; and

(B) used as provided in Subsection 59-12-206(2).

(3) A tax under this part is not subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (6).

[~~(4) A governing body of a municipality adopting an ordinance imposing penalties and interest under Subsection (2)(c) may impose penalties and interest in amounts that are less than or equal to the penalties and interest rates authorized for the commission under Sections 59-1-401 and 59-1-402.~~]

[~~(5) A municipality may adopt an ordinance imposing penalties and interest under Subsection (2)(c) only if the municipality does not contract with the commission to collect the tax.~~]

[~~(6) If a municipality elects to collect the tax as provided in Subsection (2), the commission shall interpret, audit, and adjudicate the tax imposed under this part.~~]

Section 5. Effective date.

(1) This bill takes effect on July 1, 2011.

(2) The amendments to Section 59-12-104.6 apply to a lodging related purchase made on or after July 1, 2011.

CHAPTER 289
H. B. 91
Passed March 1, 2011
Approved March 25, 2011
Effective May 10, 2011

REAL ESTATE RELATED AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions related to real estate in general and the Division of Real Estate to address the regulation of activities involving real estate.

Highlighted Provisions:

This bill:

- amends the Utah Uniform Land Sales Practices Act, including:
  - modifying penalties; and
  - repealing extradition proceedings;
- modifies the Utah Residential Mortgage Practices and Licensing Act, including:
  - modifying the definition provisions;
  - addressing payments to the division that are dishonored;
  - addressing the establishment of fees;
  - addressing qualifications for licensure and criminal histories;
  - providing for enforcement of reporting requirements;
  - modifying prohibited conduct;
  - addressing recordkeeping requirements; and
  - allowing for de novo review under certain circumstances;
- modifies the Appraisal Management Company Registration and Regulation Act, including:
  - modifying the definition provisions;
  - addressing when board action is taken with the concurrence of the division;
  - addressing payments to the division that are dishonored;
  - expanding provisions related to criminal histories;
  - allowing the board to delegate to the division certain hearings;
  - providing for the extension of the term of a license;
  - modifying prohibited conduct;
  - providing for the payment of certain costs related to investigations;
  - increasing the amount of a civil penalty; and
  - addressing the contents and affect of an order;
- modifies the Real Estate Licensing and Practices Act, including:
  - modifying the definition provisions;
  - addressing payments to the division that are dishonored;
  - providing for de novo review in certain circumstances;
  - addressing criminal histories;
  - addressing when the division may extend the term of a license;
  - providing for the enforcement of reporting requirements; and
  - modifying grounds for disciplinary conduct;
- renumbers and amends the Real Estate Appraiser Licensing and Certification Act, including:
  - addressing when the board may take action with the concurrence of the division;
  - addressing criminal histories;
  - addressing when the division may extend the term of a license;
  - modifying reinstatement requirements; and
  - allowing the board to delegate certain actions to the division; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-5-1, as last amended by Laws of Utah 2003, Chapter 301
13-21-2, as last amended by Laws of Utah 2008, Chapter 250
16-11-2, as last amended by Laws of Utah 2010, Chapter 379
17-17-2, as last amended by Laws of Utah 2010, Chapter 131
31A-2-402, as last amended by Laws of Utah 2010, Chapter 379
31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382
48-2c-1502, as last amended by Laws of Utah 2010, Chapter 379
53C-4-103, as enacted by Laws of Utah 2008, Chapter 203
57-11-16, as last amended by Laws of Utah 2009, Chapter 352
59-1-404, as last amended by Laws of Utah 2008, Chapter 382
59-2-701, as last amended by Laws of Utah 2001, Chapter 214
61-2-201, as renumbered and amended by Laws of Utah 2010, Chapter 379
61-2c-102, as last amended by Laws of Utah 2010, Chapters 184, 379 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 379
61-2c-103, as last amended by Laws of Utah 2010, Chapter 379
61-2c-202, as last amended by Laws of Utah 2010, Chapter 379
61-2c-203, as last amended by Laws of Utah 2010, Chapter 379
61-2c-205, as last amended by Laws of Utah 2010, Chapter 379
61-2c-301, as last amended by Laws of Utah 2010, Chapters 184 and 379
61-2c-302, as last amended by Laws of Utah 2010, Chapter 379

61-2c-402, as last amended by Laws of Utah 2010, Chapter 379
61-2c-501.5, as enacted by Laws of Utah 2010, Chapter 379
61-2c-507, as last amended by Laws of Utah 2010, Chapter 379
61-2e-102, as enacted by Laws of Utah 2009, Chapter 269
61-2e-103, as enacted by Laws of Utah 2009, Chapter 269
61-2e-202, as enacted by Laws of Utah 2009, Chapter 269
61-2e-203, as enacted by Laws of Utah 2009, Chapter 269
61-2e-204, as enacted by Laws of Utah 2009, Chapter 269
61-2e-301, as enacted by Laws of Utah 2009, Chapter 269
61-2e-307, as enacted by Laws of Utah 2009, Chapter 269
61-2e-401, as enacted by Laws of Utah 2009, Chapter 269
61-2e-402, as enacted by Laws of Utah 2009, Chapter 269
61-2f-102, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 379
61-2f-105, as enacted by Laws of Utah 2010, Chapter 379
61-2f-202, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379
61-2f-203, as renumbered and amended by Laws of Utah 2010, Chapter 379
61-2f-204, as renumbered and amended by Laws of Utah 2010, Chapter 379
61-2f-206, as enacted by Laws of Utah 2010, Chapter 379
61-2f-301, as renumbered and amended by Laws of Utah 2010, Chapter 379
61-2f-401, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379
63A-5-220, as last amended by Laws of Utah 2010, Chapter 278
63A-5-401, as enacted by Laws of Utah 2008, Chapter 203
70D-1-102, as renumbered and amended by Laws of Utah 2009, Chapter 72
72-5-117, as enacted by Laws of Utah 2008, Chapter 203
79-2-403, as renumbered and amended by Laws of Utah 2009, Chapter 344

ENACTS:
61-2g-302, Utah Code Annotated 1953
61-2g-303, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
61-2g-101, (Renumbered from 61-2b-1, as last amended by Laws of Utah 1999, Chapter 117)
61-2g-102, (Renumbered from 61-2b-2, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-103, (Renumbered from 61-2b-25, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-201, (Renumbered from 61-2b-6, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-202, (Renumbered from 61-2b-37, as last amended by Laws of Utah 2009, Chapter 183)
61-2g-203, (Renumbered from 61-2b-38, as last amended by Laws of Utah 2005, Chapter 199)
61-2g-204, (Renumbered from 61-2b-7, as last amended by Laws of Utah 2010, Chapter 286)
61-2g-205, (Renumbered from 61-2b-8, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-301, (Renumbered from 61-2b-3, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-304, (Renumbered from 61-2b-18, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-305, (Renumbered from 61-2b-19, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-306, (Renumbered from 61-2b-20, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-307, (Renumbered from 61-2b-40, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-308, (Renumbered from 61-2b-22, as last amended by Laws of Utah 2008, Chapters 382 and 387)
61-2g-309, (Renumbered from 61-2b-21, as last amended by Laws of Utah 2008, Chapters 382 and 387)
61-2g-310, (Renumbered from 61-2b-23, as last amended by Laws of Utah 1999, Chapter 117)
61-2g-311, (Renumbered from 61-2b-10, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-312, (Renumbered from 61-2b-13, as last amended by Laws of Utah 2001, Chapter 214)
61-2g-313, (Renumbered from 61-2b-14, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-314, (Renumbered from 61-2b-15, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-315, (Renumbered from 61-2b-24, as last amended by Laws of Utah 2008, Chapter 387)
61-2g-401, (Renumbered from 61-2b-17, as last amended by Laws of Utah 2010, Chapter 379)

61-2g-402, (Renumbered from 61-2b-26, as last amended by Laws of Utah 2008, Chapter 387)
61-2g-403, (Renumbered from 61-2b-27, as last amended by Laws of Utah 2009, Chapter 352)
61-2g-404, (Renumbered from 61-2b-32, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-405, (Renumbered from 61-2b-34, as last amended by Laws of Utah 2005, Chapter 199)
61-2g-406, (Renumbered from 61-2b-36, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-407, (Renumbered from 61-2b-41, as enacted by Laws of Utah 1996, Chapter 131)
61-2g-501, (Renumbered from 61-2b-28, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-502, (Renumbered from 61-2b-29, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-503, (Renumbered from 61-2b-30.5, as last amended by Laws of Utah 2010, Chapter 379)
61-2g-504, (Renumbered from 61-2b-31, as last amended by Laws of Utah 2008, Chapters 3 and 387)
61-2g-505, (Renumbered from 61-2b-33, as last amended by Laws of Utah 2010, Chapter 379)

REPEALS:
57-11-19, as enacted by Laws of Utah 1973, Chapter 158
61-2b-5, as enacted by Laws of Utah 1990, Chapter 212
61-2b-9, as last amended by Laws of Utah 2005, Chapter 199
61-2b-30, as last amended by Laws of Utah 2008, Chapter 382
61-2b-39, as last amended by Laws of Utah 2010, Chapter 379

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

Section 1. Section 7-5-1 is amended to read:

7-5-1. Definitions -- Allowable trust companies -- Exceptions.

(1) As used in this chapter:

(a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.

(b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in Subsection 75-1-201[~~(53)~~](55).

(c) "Trust business" does not include the following means of holding [~~funds~~] money, assets, or other property:

(i) [~~funds~~] money held in a client trust account by an attorney authorized to practice law in this state;

(ii) [~~funds~~] money held in connection with the purchase or sale of real estate by a person [~~authorized to act as a real estate broker in this state~~] licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

(iii) [~~funds~~] money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah Insurance Department to act as an escrow agent in this state;

(iv) [~~funds~~] money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;

(v) [~~funds~~] money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including [~~funds~~] money held by an escrow agent for payment of taxes or insurance;

(vi) [~~funds~~] money and other assets held in trust on an occasional or isolated basis by a person who does not represent that [~~he~~] the person is engaged in the trust business in Utah;

(vii) [~~funds~~] money or other assets found by a court to be held in an implied, resulting, or constructive trust;

(viii) [~~funds~~] money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:

(A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

(B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;

(C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing business in this state, including a statement of the value of the assets to be managed[~~. That~~], that notice need not be provided, however, if a trust company has been employed by the fiduciary to manage the assets; and

(D) in the event guardianship services are needed, the person seeking appointment as a guardian under this Subsection (1) is a specialized care professional, as that term is defined in Section 75-5-311, or a business or state agency that employs the services of one of those professionals for the purpose of caring for the incapacitated person, so long as the specialized care professional, business, or state agency does not:

(I) profit financially or otherwise from, or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

(II) otherwise have a conflict of interest in providing those services;

(ix) [~~funds~~] money or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;

(x) [~~funds~~] money, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or

(xi) [~~funds~~] money, assets, and other property held in a business trust for the benefit of holders of certificates of beneficial interest if the fiduciary activities of the business trust are merely incidental to conducting business in the business trust form.

(d) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:

(i) a Utah depository institution or its wholly owned subsidiary;

(ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;

(iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);

(iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and

(v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

(2) Only a trust company may engage in the trust business in this state.

(3) The requirements of this chapter do not apply to:

(a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;

(b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or

(c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Section 2. Section 13-21-2 is amended to read:

13-21-2. Definitions -- Exemptions.

As used in this chapter:

(1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Credit reporting agency" means a person who, for a monetary fee, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third persons.

(3) (a) "Credit services organization" means a person who represents that the person or an employee is a debt professional or credit counselor, or, with respect to the extension of credit by others, sells, provides, or performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:

(i) improving a buyer's credit record, history, or rating;

(ii) providing advice, assistance, instruction, or instructional materials to a buyer with regard to Subsection (3)(a)(i); or

(iii) debt reduction or debt management plans.

(b) "Credit services organization" does not include:

(i) a person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States and who derives at least 35% of the person's income from making loans and extensions of credit;

(ii) a depository institution:

(A) as defined in Section 7-1-103; or

(B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

(iii) a person licensed as a [~~real estate broker by this state~~] principal broker under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the course and scope of that license;

(iv) a person licensed to practice law in this state if:

(A) the person renders the services described in Subsection (3)(a) within the course and scope of the person's practice as an attorney; and

(B) the services described in Subsection (3)(a) are incidental to the person's practice as an attorney;

(v) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation;

(vi) a credit reporting agency if the services described in Subsection (3)(a) are incidental to the credit reporting agency's services; or

(vii) a person who provides debt-management services and is required to be registered under Title 13, Chapter 42, Uniform Debt-Management Services Act.

(4) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

Section 3. Section 16-11-2 is amended to read:

16-11-2. Definitions.

As used in this chapter:

(1) "Filed" means the division has received and approved, as to form, a document submitted under [~~the provisions of~~] this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(2) "Professional corporation" means a corporation organized under this chapter.

(3) "Professional service" means the personal service rendered by:

(a) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

(c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;

(e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine;

(h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(l) an attorney granted the authority to practice law by:

(i) the Utah Supreme Court; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(m) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(n) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;

(o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(p) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(q) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

(r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects Licensing Act,

and any subsequent laws regulating landscape architects; or

(t) an individual licensed, certified, or registered under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.

(4) "Regulating board" means the board that is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter unless the context clearly indicates that a different meaning is intended.

Section 4. Section 17-17-2 is amended to read:

17-17-2. Assessor to be state qualified -- Vacancy -- Filling vacancy.

(1) (a) Except as provided in Subsection (1)(b), in addition to the requirements of Section 17-16-1, any person elected to the office of county assessor after November 1, 1993, shall be a state-licensed or state-certified appraiser as defined in Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act, [~~prior to~~] before the expiration of 36 months from the day on which [~~his~~] the person's term of office begins.

(b) Notwithstanding Subsection (1)(a), a county assessor of a county of the first through third class shall be a state-licensed or state-certified appraiser as defined in Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act, [~~prior to~~] before filing for office if the county assessor is:

(i) elected to the office of county assessor on or after January 1, 2010; or

(ii) selected to fill the vacancy of a county assessor as described in Subsection (2).

(2) (a) If an assessor fails to meet the requirement of this section, the assessor's office is automatically vacant.

(b) (i) (A) If a vacancy occurs under this section, the county legislative body shall fill the vacancy in the manner provided in Sections 17-53-104 and 20A-1-508.

(B) A person selected to fill the vacancy shall be a state-licensed or state-certified appraiser before assuming the office of county assessor.

(ii) If a state-licensed or state-certified appraiser cannot be found to fill a vacancy which resulted from the requirements of this section, the county legislative body may contract with a state-licensed or state-certified appraiser from outside the county to fill the remainder of the term in the office of county assessor.

Section 5. Section 31A-2-402 is amended to read:

31A-2-402. Definitions.

As used in this part:

(1) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

(2) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(3) "Dual licensed title licensee" means a title licensee who holds:

(a) a producer license as a title licensee; and

(b) a license or certificate under:

(i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

[~~(i)~~] (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

[~~(ii)~~] (iii) Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act[~~; or~~].

[~~(iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.~~]

(4) "Real Estate Commission" means the Real Estate Commission created in Section 61-2f-103.

(5) "Title licensee" means a person licensed under this title as:

(a) an agency with a title insurance line of authority;

(b) a producer with:

(i) a general title insurance line of authority; or

(ii) a specific category of authority for title insurance; or

(c) a title insurance adjuster.

Section 6. Section 31A-23a-402 is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Inducement -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any

specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

(2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be issued or continued, including premium or commission rebates.

(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.

(iii) This Subsection (2)(a) does not preclude:

(A) an insurer from reducing premiums because of expense savings;

(B) an insurer from providing to a policyholder or insured one or more incentives to participate in programs or activities designed to reduce claims or claim expenses;

(C) the usual kinds of social courtesies not related to particular transactions; or

(D) an insurer from receiving premiums under an installment payment plan.

(iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define what constitutes an incentive described in Subsection (2)(a)(iii)(B).

(b) A licensee under this title may not absorb the tax under Section 31A-3-301.

(c) (i) A title insurer or producer or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

(A) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

(B) any special favor or advantage not generally available to others; [~~or~~]

(C) any money or other consideration, except if approved under Section 31A-2-405; or

(D) material inducement.

(ii) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

(iii) An insured or any other person connected, directly or indirectly, with the transaction[~~, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them,~~] may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(c)(i)[~~,~~], including:

(A) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

(B) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

(C) a builder;

(D) an attorney; or

(E) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

(i) a person who is or should be licensed under this title;

(ii) an employee of that licensee or person who should be licensed;

(iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that they:

(i) are misleading;

(ii) are deceptive;

(iii) are unfairly discriminatory;

(iv) provide an unfair inducement; or

(v) unreasonably restrain competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define any other unfair method of competition or any other unfair or deceptive act or practice after a finding that they:

(i) are misleading;

(ii) are deceptive;

(iii) are unfairly discriminatory;

(iv) provide an unfair inducement; or

(v) unreasonably restrain competition.

Section 7. Section 48-2c-1502 is amended to read:

48-2c-1502. Definitions.

As used in this part:

(1) "Professional services company" means a limited liability company organized under this part to render professional services.

(2) "Professional services" means the personal services rendered by:

(a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(b) an attorney granted the authority to practice law by the:

(i) Supreme Court of Utah; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;

(d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws, regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act,

and any subsequent laws regulating the practice of naturopathy;

(g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, and any subsequent laws regulating the practice of mental health therapy;

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine; or

(t) an individual licensed, certified, or registered under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.

(3) "Regulating board" means the board or agency organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a company is organized to render.

Section 8. Section 53C-4-103 is amended to read:

53C-4-103. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the administration buys, sells, or exchanges real property, the administration shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

(a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

(b) with a value of less than $100,000, as estimated by the state agency.

Section 9. Section 57-11-16 is amended to read:

57-11-16. Violations -- Duties of attorney general, county attorney, or district attorney.

[~~(1) (a) This Subsection (1) applies to a person who willfully:~~]

[~~(i) violates this chapter or a rule adopted under this chapter; or~~]

[~~(ii) in an application for registration under this chapter or under the federal act, makes any untrue statement of a material fact or omits to state a material fact.~~]

[~~(b) A person described in Subsection (1)(a) may be:~~]

[~~(i) fined a civil penalty not to exceed the greater of:~~]

[~~(A) $2,500 for each violation; or~~]

[~~(B) double the amount of any gain or economic benefit derived from each violation;~~]

[~~(ii) imprisoned for not more than two years; or~~]

[~~(iii) both fined or imprisoned.~~]

[~~(c) An indictment or information may not be returned or a complaint filed under this chapter more than five years after the alleged violation.~~]

(1) (a) A person who violates this chapter is guilty of a class B misdemeanor, except as provided in Subsection (1)(b).

(b) A person who knowingly makes an untrue statement or knowingly omits a material fact in an application for registration under this chapter or under the federal act is guilty of a class A misdemeanor.

(2) (a) The attorney general shall advise the division and the division's staff in matters requiring legal counsel or services in the exercise of the division's power or performance of the division's duties.

(b) In the prosecution or defense of an action under this section, the attorney general, the county attorney, or the district attorney of the appropriate county shall perform [~~all~~] the necessary legal services without compensation other than their regular salaries.

Section 10. Section 59-1-404 is amended to read:

59-1-404. Definitions -- Confidentiality of commercial information obtained from a property taxpayer or derived from the commercial information -- Rulemaking authority -- Exceptions -- Written explanation -- Signature requirements -- Retention of signed explanation by employer -- Penalty.

(1) As used in this section:

(a) "Appraiser" means an individual who holds an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act and includes an individual associated with an appraiser who assists the appraiser in preparing an appraisal.

(b) "Appraisal" [~~means an appraisal~~] is as defined in Section [~~61-2b-2~~] 61-2g-102.

(c) (i) "Commercial information" means:

(A) information of a commercial nature obtained from a property taxpayer regarding the property taxpayer's property; or

(B) information derived from the information described in this Subsection (1)(c)(i).

(ii) (A) "Commercial information" does not include information regarding a property taxpayer's property if the information is intended for public use.

(B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (1)(c)(ii)(A), the commission may by rule prescribe the circumstances under which information is intended for public use.

(d) "Consultation service" [~~means a consultation service~~] is as defined in Section [~~61-2b-2~~] 61-2g-102.

(e) "Locally assessed property" means property that is assessed by a county assessor in accordance with Chapter 2, Part 3, County Assessment.

(f) "Property taxpayer" means a person that:

(i) is a property owner; or

(ii) has in effect a contract with a property owner to:

(A) make filings on behalf of the property owner;

(B) process appeals on behalf of the property owner; or

(C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.

(g) "Property taxpayer's property" means property with respect to which a property taxpayer:

(i) owns the property;

(ii) makes filings relating to the property;

(iii) processes appeals relating to the property; or

(iv) pays a tax under Chapter 2, Property Tax Act, on the property.

(h) "Protected commercial information" means commercial information that:

(i) identifies a specific property taxpayer; or

(ii) would reasonably lead to the identity of a specific property taxpayer.

(2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial information:

(a) obtained in the course of performing any duty that the individual listed under Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or

(b) relating to an action or proceeding:

(i) with respect to a tax imposed on property in accordance with Chapter 2, Property Tax Act; and

(ii) that is filed in accordance with:

(A) this chapter;

(B) Chapter 2, Property Tax Act; or

(C) this chapter and Chapter 2, Property Tax Act.

(3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual listed under Subsection 59-1-403(1)(a) may disclose the following information:

(i) the assessed value of property;

(ii) the tax rate imposed on property;

(iii) a legal description of property;

(iv) the physical description or characteristics of property, including a street address or parcel number for the property;

(v) the square footage or acreage of property;

(vi) the square footage of improvements on property;

(vii) the name of a property taxpayer;

(viii) the mailing address of a property taxpayer;

(ix) the amount of a property tax:

(A) assessed on property;

(B) due on property;

(C) collected on property;

(D) abated on property; or

(E) deferred on property;

(x) the amount of the following relating to property taxes due on property:

(A) interest;

(B) costs; or

(C) other charges;

(xi) the tax status of property, including:

(A) an exemption;

(B) a property classification;

(C) a bankruptcy filing; or

(D) whether the property is the subject of an action or proceeding under this title;

(xii) information relating to a tax sale of property; or

(xiii) information relating to single-family residential property.

(b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described in Subsection (3)(a) in written format.

(ii) The following may charge a reasonable fee to cover the actual cost of providing the information described in Subsection (3)(a) in written format:

(A) the commission;

(B) a county;

(C) a city; or

(D) a town.

(4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding:

(A) under this title;

(B) under another law under which a property taxpayer is required to disclose commercial information; or

(C) to which the commission is a party;

(iii) on behalf of any party to any action or proceeding under this title if the commercial information is directly involved in the action or proceeding; or

(iv) if the requirements of Subsection (4)(b) are met, that is:

(A) relevant to an action or proceeding:

(I) filed in accordance with this title; and

(II) involving property; or

(B) in preparation for an action or proceeding involving property.

(b) Commercial information shall be disclosed in accordance with Subsection (4)(a)(iv):

(i) if the commercial information is obtained from:

(A) a real estate agent if the real estate agent is not a property taxpayer of the property that is the subject of the action or proceeding;

(B) an appraiser if the appraiser:

(I) is not a property taxpayer of the property that is the subject of the action or proceeding; and

(II) did not receive the commercial information pursuant to Subsection (8);

(C) a property manager if the property manager is not a property taxpayer of the property that is the subject of the action or proceeding; or

(D) a property taxpayer other than a property taxpayer of the property that is the subject of the action or proceeding;

(ii) regardless of whether the commercial information is disclosed in more than one action or proceeding; and

(iii) (A) if a county board of equalization conducts the action or proceeding, the county board of equalization takes action to provide that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section;

(B) if the commission conducts the action or proceeding, the commission enters a protective order or, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, makes rules specifying that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section; or

(C) if a court of competent jurisdiction conducts the action or proceeding, the court enters a protective order specifying that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section.

(c) Notwithstanding Subsection (4)(a), a court may require the production of, and may admit in evidence, commercial information that is specifically pertinent to the action or proceeding.

(5) Notwithstanding Subsection (2), this section does not prohibit:

(a) the following from receiving a copy of any commercial information relating to the basis for assessing a tax that is charged to a property taxpayer:

(i) the property taxpayer;

(ii) a duly authorized representative of the property taxpayer;

(iii) a person that has in effect a contract with the property taxpayer to:

(A) make filings on behalf of the property taxpayer;

(B) process appeals on behalf of the property taxpayer; or

(C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;

(iv) a property taxpayer that purchases property from another property taxpayer; or

(v) a person that the property taxpayer designates in writing as being authorized to receive the commercial information;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of a particular property taxpayer's commercial information; or

(c) the inspection by the attorney general or other legal representative of the state or a legal representative of a political subdivision of the state of the commercial information of a property taxpayer:

(i) that brings action to set aside or review a tax or property valuation based on the commercial information;

(ii) against which an action or proceeding is contemplated or has been instituted under this title; or

(iii) against which the state or a political subdivision of the state has an unsatisfied money judgment.

(6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule establish standards authorizing an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:

(a) (i) in a published decision; or

(ii) in carrying out official duties; and

(b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property taxpayer that provided the commercial information.

(7) Notwithstanding Subsection (2):

(a) an individual listed under Subsection 59-1-403(1)(a) may share commercial information with the following:

(i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or

(ii) a representative, agent, clerk, or other officer or employee of a county as required to fulfill an obligation created by Chapter 2, Property Tax Act;

(b) an individual listed under Subsection 59-1-403(1)(a) may perform the following to fulfill an obligation created by Chapter 2, Property Tax Act:

(i) publish notice;

(ii) provide notice; or

(iii) file a lien; or

(c) the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(8) Notwithstanding Subsection (2):

(a) subject to the limitations in this section, an individual described in Subsection 59-1-403(1)(a) may share the following commercial information with an appraiser:

(i) the sales price of locally assessed property and the related financing terms;

(ii) capitalization rates and related rates and ratios related to the valuation of locally assessed property; and

(iii) income and expense information related to the valuation of locally assessed property; and

(b) except as provided in Subsection (4), an appraiser who receives commercial information:

(i) may disclose the commercial information:

(A) to an individual described in Subsection 59-1-403(1)(a);

(B) to an appraiser;

(C) in an appraisal if protected commercial information is removed to protect its confidential nature; or

(D) in performing a consultation service if protected commercial information is not disclosed; and

(ii) may not use the commercial information:

(A) for a purpose other than to prepare an appraisal or perform a consultation service; or

(B) for a purpose intended to be, or which could reasonably be foreseen to be, anti-competitive to a property taxpayer.

(9) (a) The commission shall:

(i) prepare a written explanation of this section; and

(ii) make the written explanation described in Subsection (9)(a)(i) available to the public.

(b) An employer of a person described in Subsection 59-1-403(1)(a) shall:

(i) provide the written explanation described in Subsection (9)(a)(i) to each person described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial information;

(ii) require each person who receives a written explanation in accordance with Subsection (9)(b)(i) to:

(A) read the written explanation; and

(B) sign the written explanation; and

(iii) retain each written explanation that is signed in accordance with Subsection (9)(b)(ii) for a time period:

(A) beginning on the day on which a person signs the written explanation in accordance with Subsection (9)(b)(ii); and

(B) ending six years after the day on which the employment of the person described in Subsection (9)(b)(iii)(A) by the employer terminates.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define "employer."

(10) (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an individual that violates a protective order or similar limitation entered pursuant to Subsection (4)(b)(iii), is guilty of a class A misdemeanor if that person:

(i) intentionally discloses commercial information in violation of this section; and

(ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this section.

(b) If the individual described in Subsection (10)(a) is an officer or employee of the state or a county and is convicted of violating this section, the individual shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall forfeit any certification or license received under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate Appraiser Licensing and Certification Act, for a period of five years.

(d) If the individual described in Subsection (10)(a) is an individual associated with an appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited from becoming licensed or certified under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate Appraiser Licensing and Certification Act, for a period of five years.

Section 11. Section 59-2-701 is amended to read:

59-2-701. Appraisal by certified or licensed appraisers only -- Certification of elected county assessors.

(1) Any person performing an appraisal for purposes of establishing fair market value of real estate or real property for the assessment roll shall be the holder of an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act, except uncertified or unlicensed appraiser trainees may, for up to 36 months after the date of hire or appointment as an appraiser trainee, appraise property under the direction of a holder of an appraiser's certificate or license issued by the division.

(2) The limitations on appraisal authority under Subsections [~~61-2b-10~~] 61-2g-311(1) and (2) and Section [~~61-2b-13~~] 61-2g-312 do not apply to a person performing an appraisal for purposes of establishing fair market value for the assessment roll.

(3) The commission may prescribe additional requirements for any person performing an appraisal for purposes of establishing fair market value for the assessment roll.

(4) The commission may, by rule, establish qualifications for personal property appraisers exempt from licensure under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

(5) It is the duty of a county assessor, as established in Section 17-17-1, to ensure that the assessor's office is in compliance with this section and any additional rules or requirements for property appraisers established by the commission.

Section 12. Section 61-2-201 is amended to read:

61-2-201. Division of Real Estate created -- Director appointed -- Personnel.

(1) There is created within the department a Division of Real Estate. The division is responsible for the administration and enforcement of:

(a) this chapter;

(b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;

[~~(e) Chapter 2b, Real Estate Appraiser Licensing and Certification Act;~~]

[~~(f)~~] (e) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

[~~(g)~~] (f) Chapter 2e, Appraisal Management Company Registration and Regulation Act; [~~and~~]

[~~(h)~~] (g) Chapter 2f, Real Estate Licensing and Practices Act[~~.~~]; and

(h) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

Section 13. Section 61-2c-102 is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

(a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.

(b) "Applicant" means a person applying for a license under this chapter.

(c) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.

(d) "Associate lending manager" means an individual who:

(i) qualifies under this chapter as a principal lending manager; and

(ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

(e) "Branch office" means a licensed entity's office:

(i) for the transaction of the business of residential mortgage loans regulated under this chapter;

(ii) other than the main office of the licensed entity; and

(iii) that operates under:

(A) the same business name as the licensed entity[~~.~~]; or

(B) another trade name that is registered with the division under the entity license.

(f) "Business day" means a day other than:

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

(g) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

(A) engage in an act that makes an individual a mortgage loan originator;

(B) make or originate a residential mortgage loan;

(C) directly or indirectly solicit a residential mortgage loan for another;

(D) unless excluded under Subsection (1)(g)(ii), render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

(II) communicating with the borrower [~~and~~] or lender; or

(III) advising on a loan term; or

(E) engage in loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty such as:

(I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;

(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;

(III) word processing;

(IV) sending correspondence; or

(V) assembling files;

(B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(g)(i); or

(C) except if an individual will engage in an activity as a mortgage loan originator, acting in one or more of the following capacities:

(I) a loan wholesaler;

(II) an account executive for a loan wholesaler;

(III) a loan underwriter;

(IV) a loan closer; or

(V) funding a loan; or

(D) if employed by a person who owns or services an [~~exiting~~] existing residential mortgage loan[~~, as defined in Section 70D-2-102~~], the direct negotiation with the borrower for the purpose of loan modification.

(h) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:

(i) Utah-specific prelicensing education; or

(ii) Utah-specific continuing education.

(i) "Closed-end" means a loan:

(i) with a fixed amount borrowed; and

(ii) that does not permit additional borrowing secured by the same collateral.

(j) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

(k) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

(l) "Concurrence" means that entities given a concurring [~~rule~~] role must jointly agree for the action to be taken.

(m) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

(n) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or indirectly:

(i) direct or exercise a controlling interest over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(ii) vote 20% or more of a class of voting securities of an entity by an individual; or

(iii) vote more than 5% of a class of voting securities of an entity by another entity.

(o) (i) "Control person" means an individual identified by an entity registered with the nationwide database as being [~~the~~] an individual [~~primarily responsible for~~] directing the management or policies of the entity.

(ii) "Control person" may include one of the following who is identified as provided in Subsection (1)(o)(i):

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(o)(ii).

(p) "Depository institution" is as defined in Section 7-1-103.

(q) "Director" means the director of the division.

(r) "Division" means the Division of Real Estate.

(s) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(t) "Entity" means:

(i) a corporation;

(ii) a limited liability company;

(iii) a partnership;

(iv) a company;

(v) an association;

(vi) a joint venture;

(vii) a business trust;

(viii) a trust; or

(ix) another organization.

(u) "Executive director" means the executive director of the Department of Commerce.

(v) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

(w) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

(i) engage, or offer to engage, in an act that:

(A) the person represents will assist a borrower in preventing a foreclosure; and

(B) relates to a transaction involving the transfer of title to residential real property; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(w)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(w)(i).

(x) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

(y) "Licensee" means a person licensed with the division under this chapter.

(z) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(aa) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

(i) act, or offer to act, on behalf of a person to:

(A) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:

(I) an increase or decrease in an interest rate;

(II) a change to the type of interest rate;

(III) an increase or decrease in the principal amount of the residential mortgage loan;

(IV) a change in the number of required period payments;

(V) an addition of collateral;

(VI) a change to, or addition of, a prepayment penalty;

(VII) an addition of a cosigner; or

(VIII) a change in persons obligated under the existing residential mortgage loan; or

(B) substitute a new residential mortgage loan for an existing residential mortgage loan; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(aa)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).

(bb) (i) Except as provided in Subsection (1)(bb)(ii), "mortgage loan originator" means an individual who for compensation or in expectation of compensation:

(A) (I) takes a residential mortgage loan application; or

(II) offers or negotiates terms of a residential mortgage loan for the purpose of:

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; and

(B) is licensed as a mortgage loan originator in accordance with this chapter.

(ii) "Mortgage loan originator" does not include a person who:

(A) is described in Subsection (1)(bb)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(g)(ii)(A);

(B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a principal lending manager; or

(Cc) an agent of a lender or principal lending manager; or

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

(cc) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.

(dd) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(ee) "Person" means an individual or entity.

(ff) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(gg) (i) "Principal lending manager" means an individual licensed as a principal lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.

(ii) An individual who is a principal lending manager may transact the business of residential mortgage loans as a mortgage loan originator.

(hh) "Record" means information that is:

(i) prepared, owned, received, or retained by a person; and

(ii) (A) inscribed on a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) in a perceivable and reproducible form.

(ii) "Residential mortgage loan" means an extension of credit, if:

(i) the loan or extension of credit is secured by a:

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

(ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)(ii)(i):

(A) is on a dwelling located in the state; and

(B) is created with the consent of the owner of the residential real property; and

(iii) solely for the purposes of defining "mortgage loan originator," the extension of credit is primarily for personal, family, or household use.

(jj) "Sponsorship" means an association in accordance with Section 61-2c-209 between an individual licensed under this chapter and an entity licensed under this chapter.

(kk) "State" means:

(i) a state, territory, or possession of the United States;

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

(ll) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

(mm) "Utah-specific" means an educational or examination requirement under this chapter that relates specifically to Utah.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 14. Section 61-2c-103 is amended to read:

61-2c-103. Powers and duties of the division.

(1) The division shall administer this chapter.

(2) In addition to a power or duty expressly provided in this chapter, the division may:

(a) receive and act on a complaint including:

(i) taking action designed to obtain voluntary compliance with this chapter; or

(ii) commencing an administrative or judicial proceeding on the division's own initiative;

(b) establish one or more programs for the education of consumers with respect to residential mortgage loans;

(c) (i) make one or more studies appropriate to effectuate the purposes and policies of this chapter; and

(ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;

(d) visit and investigate a person licensed under this chapter, regardless of whether the person is located in Utah; [~~and~~]

(e) employ one or more necessary hearing examiners, investigators, clerks, and other employees and agents[~~.~~]; and

(f) establish fees under Section 63J-1-504 for:

(i) processing an application for licensing or certification; and

(ii) any other function required or permitted by this chapter.

(3) The division shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

(a) licensure procedures for:

(i) a person required by this chapter to obtain a license with the division; and

(ii) the establishment of a branch office by an entity;

(b) proper handling of money received by a licensee;

(c) record-keeping requirements by a licensee, including proper disposal of a record;

(d) certification procedures for certifying an education provider; and

(e) standards of conduct for a licensee or certified education provider.

(4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:

(a) required for uniformity amongst states; and

(b) not inconsistent with this chapter.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.

(6) The division shall annually:

(a) review the requirements related to the nationwide database imposed by federal licensing requirements or the nationwide database on:

(i) the division;

(ii) a licensee under this chapter;

(iii) a certified education provider; or

(iv) an approved examination provider; and

(b) after the review required by Subsection (6)(a):

(i) report to the Business and Labor Interim Committee the impact of the requirements on the implementation by the division of this chapter; and

(ii) recommend legislation, if any, to the Business and Labor Interim Committee related to how the division should coordinate with the nationwide database.

(7) The division may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:

(a) collect or maintain a record; and

(b) process a transaction fee or other fee.

(8) The division shall regularly report the following to the nationwide database:

(a) a violation of this chapter;

(b) disciplinary action under this chapter; and

(c) other information relevant to this chapter.

(9) If a person pays a fee or costs to the division with a negotiable instrument [~~and the negotiable~~

~~instrument~~] or any other method that is not honored for payment:

(a) the transaction for which the payment is submitted is voidable by the division;

(b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(c) the person's license, certification, or registration is automatically suspended:

(i) beginning the day on which the payment is due; and

(ii) ending the day on which payment is made in full.

Section 15. Section 61-2c-202 is amended to read:

61-2c-202. Licensure procedures.

(1) To apply for licensure under this chapter an applicant shall in a manner provided by the division by rule:

(a) if the applicant is an entity, submit a licensure statement that:

(i) lists any name under which the entity will transact business in this state;

(ii) lists the address of the principal business location of the entity;

(iii) identifies the principal lending manager of the entity;

(iv) contains the signature of the principal lending manager;

(v) identifies the one or more control persons for the entity;

(vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans;

(vii) discloses any adverse administrative action taken by an administrative agency against:

(A) the entity; or

(B) any control person for the entity;

(viii) discloses any history of criminal proceedings involving any control person for the entity; and

(ix) includes any information required by the division by rule;

(b) if the applicant is an individual:

(i) submit a licensure statement that identifies the entity with which the applicant is sponsored;

(ii) authorize a criminal background check through the nationwide database accessing:

(A) the Utah Bureau of Criminal Identification, if the nationwide database is able to obtain information from the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation;

(iii) submit evidence using a method approved by the division by rule of having successfully completed approved prelicensing education in accordance with Section 61-2c-204.1;

(iv) submit evidence using a method approved by the division by rule of having successfully passed any required licensing examination in accordance with Section 61-2c-204.1; and

(v) submit evidence using a method approved by the division by rule of having successfully registered in the nationwide database, including paying a fee required by the nationwide database; and

(c) pay to the division:

(i) an application fee established by the division in accordance with Section 63J-1-504; and

(ii) the reasonable expenses incurred by the division in processing the application for licensure.

(2) (a) Upon receiving an application, the division, with the concurrence of the commission, shall determine whether the applicant:

(i) meets the qualifications for licensure; and

(ii) complies with this section.

(b) If the division, with the concurrence of the commission, determines that an applicant meets the qualifications for licensure and complies with this section, the division shall issue the applicant a license.

(c) If the division, with the concurrence of the commission, determines that the division requires more information to make a determination under Subsection (2)(a), the division may:

(i) hold the application pending further information about an applicant's criminal background or history related to adverse administrative action in any jurisdiction; or

(ii) issue a conditional license:

(A) pending the completion of a criminal background check; and

(B) subject to probation, suspension, or revocation if the criminal background check reveals that the applicant did not truthfully or accurately disclose on the licensing application a criminal history or other history related to adverse administrative action.

(3) (a) The commission may delegate to the division the authority to:

(i) review a class or category of application for an initial or renewed license;

(ii) determine whether an applicant meets the qualifications for licensure;

(iii) conduct a necessary hearing on an application; and

(iv) approve or deny a license application without concurrence by the commission.

(b) If the commission delegates to the division the authority to approve or deny an application without

concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for a de novo review of the [~~denial~~] application.

(c) An applicant who is denied licensure under Subsection (3)(b) may seek agency review by the executive director only after the commission reviews the division's denial of the applicant's application.

(d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the day on which the commission order denying the licensure is issued.

Section 16. Section 61-2c-203 is amended to read:

61-2c-203. General qualifications for licensure.

(1) To qualify for licensure under this chapter, a person shall demonstrate through procedures established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) financial responsibility;

(b) good moral character, honesty, integrity, and truthfulness; and

(c) the competence to transact the business of residential mortgage loans, including general fitness such as to command the confidence of the community and to warrant a determination that the person will operate honestly, fairly, and efficiently within the purposes of this chapter.

[~~(2) If an applicant is an individual, the applicant may not have:~~]

[~~(a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:~~]

[~~(i) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering; or~~]

[~~(ii) a felony in the seven years preceding the day on which an application is submitted to the division;~~]

[~~(b) in the five years preceding the day on which an application is submitted to the division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion its equivalent:~~]

[~~(i) a class B or class C misdemeanor involving moral turpitude; or~~]

[~~(ii) a crime in another jurisdiction that is the equivalent of a class B or class C misdemeanor involving moral turpitude;~~]

[~~(c) had a license as a mortgage loan originator revoked by a governmental jurisdiction at any time;~~]

[~~(d) had a license or registration suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if:~~]

[~~(i) the registration or license is issued by this state or another jurisdiction; and~~]

[~~(ii) the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to moral character, honesty, integrity, truthfulness, or the competency to transact the business of residential mortgage loans;~~]

[~~(e) been the subject of a bar by the Securities and Exchange Commission, the New York Stock Exchange, or the National Association of Securities Dealers within the five years preceding the date the individual applies for registration; or~~]

[~~(f) had a permanent injunction entered against the individual:~~]

[~~(i) by a court or administrative agency; and~~]

[~~(ii) on the basis of:~~]

[~~(A) conduct or a practice involving the business of residential mortgage loans; or~~]

[~~(B) conduct involving fraud, misrepresentation, or deceit.~~]

[~~(3)~~] (2) If an applicant is an entity, the applicant may not have a control person who fails to meet the requirements of Subsection [~~(2)~~] (1) for an individual applicant.

Section 17. Section 61-2c-205 is amended to read:

61-2c-205. Term of licensure -- Renewal -- Reporting of changes.

(1) (a) A license issued under this chapter expires as follows:

(i) for the calendar year the license is issued:

(A) if the license is issued on or before October 31, the license expires on December 31 of the same calendar year; and

(B) if the license is issued on or after November 1, the license expires on December 31 of the following calendar year; and

(ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a license expires annually on December 31.

(b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a license, no later than the date the license expires, a licensee shall in a manner provided by the division by rule:

(a) file a renewal statement;

(b) furnish the information required by Subsection 61-2c-202(1);

(c) renew the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database;

(d) pay a fee to the division established by the division in accordance with Section 63J-1-504; and

(e) if the licensee is an individual and the individual's license is in active status at the time of application for renewal, submit proof of having completed during the year before application the continuing education required under Section 61-2c-204.1.

(3) (a) A licensee under this chapter shall notify the division in a manner provided by the division by rule within 10 days of the date on which there is a change in:

(i) a name under which the licensee transacts the business of residential mortgage loans in this state;

(ii) (A) if the licensee is an entity, the business location of the licensee; or

(B) if the licensee is an individual, the home and business addresses of the individual;

(iii) the principal lending manager of the entity;

(iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or

(v) any other information that is defined as material by rule made by the division.

(b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.

(c) The division may charge a fee established in accordance with Section 63J-1-504 for processing a change that a licensee is required to report to the division under Subsection (3)(a).

(4) (a) A licensee shall notify the division by sending the division a signed statement within 10 business days of:

[~~(a)~~] (i) (A) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class B misdemeanor;

[~~(ii)~~] (B) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A misdemeanor, or class B misdemeanor; or

[~~(iii)~~] (C) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class B misdemeanor by[~~: (A)~~] a diversion agreement[~~;~~], or [~~(B)~~] any other agreement under which a criminal charge is held in suspense for a period of time;

[~~(b)~~] (ii) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;

[~~(c)~~] (iii) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or

[~~(d)~~] (iv) the entry of a cease and desist order or a temporary or permanent injunction:

[~~(i)~~] (A) against the licensee by a court or licensing agency; and

[~~(ii)~~] (B) based on[~~: (A)~~] conduct or a practice involving the business of residential mortgage loans[~~;~~], or [~~(B)~~] conduct involving fraud, misrepresentation, or deceit.

(b) The commission, with the concurrence of the division, shall enforce the reporting requirement under this Subsection (4) pursuant to Section 61-2c-402.

(5) (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.

(b) A licensee whose license has expired may apply to reinstate the expired license, in a manner provided by the division by rule by:

(i) requesting reinstatement;

(ii) paying to the division a renewal fee and a late fee determined by the division under Section 63J-1-504; and

(iii) reinstating the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database.

Section 18. Section 61-2c-301 is amended to read:

61-2c-301. Prohibited conduct -- Violations of the chapter.

(1) A person transacting the business of residential mortgage loans in this state may not:

(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

[~~(ii) if the person does not comply with Section 70D-2-305;~~]

(ii) without providing to the loan applicant a written statement signed by the loan applicant:

(A) stating whether or not the fee or deposit is refundable; and

(B) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the applicant;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;

(d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

(ii) an order of the commission or division; or

(iii) a rule made by the division;

(g) fail to respond within the required time period to:

(i) a notice or complaint of the division; or

(ii) a request for information from the division;

(h) make false representations to the division, including in a licensure statement;

(i) for a residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

(i) appraiser;

(ii) escrow agent;

(iii) real estate agent;

(iv) general contractor; or

(v) title insurance producer;

(j) order a title insurance report or hold a title insurance policy unless the person provides to the title insurer a copy of a valid, current license under this chapter;

(k) engage in unprofessional conduct as defined by rule;

(l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;

(m) engage in false or misleading advertising;

(n) (i) fail to account for money received in connection with a residential mortgage loan;

(ii) use money for a different purpose from the purpose for which the money is received; or

(iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;

(o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

(p) engage in an act that is performed to:

(i) evade this chapter; or

(ii) assist another person to evade this chapter;

(q) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;

(r) in the case of the principal lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:

(i) unlicensed staff; and

(ii) a mortgage loan originator who is affiliated with the principal lending manager;

(s) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;

(t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(i) provide a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2);

(u) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-102(1)(g)(ii)(A), including through:

(i) advertising;

(ii) a business card;

(iii) stationery;

(iv) a brochure;

(v) a sign;

(vi) a rate list; or

(vii) other promotional item; or

(v) (i) engage in an act of loan modification assistance without being licensed under this chapter;

(ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;

(iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;

[~~(iii)~~] (iv) request or require a person to pay a fee [~~if:~~] before obtaining:

[~~(A) the person is required to pay the fee before entering into a written agreement specifying what one or more acts of loan modification assistance will be completed if the fee is paid; or~~]

[~~(B) in a case when the residential mortgage loan that is the subject of the loan modification assistance is foreclosed within one year of the day on which the person enters into a written agreement, the person is required to forfeit the fee for any reason;~~]

(A) a written offer for a loan modification from the person's lender or servicer; and

(B) the person's written acceptance of the offer from the lender or servicer;

[~~(iv)~~] (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:

(A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(B) falsely representing or advertising that the licensee is acting on behalf of:

(I) a government agency;

(II) the person's lender or loan servicer; or

(III) a nonprofit or charitable institution;

[~~(v)~~] (vi) recommend or participate in a loan modification that requires a person to:

(A) transfer title to real property to the licensee or to a [~~third party~~] third-party with whom the licensee has a business relationship or financial interest;

(B) make a mortgage payment to a person other than the person's loan servicer; or

(C) refrain from contacting the person's:

(I) lender;

(II) loan servicer;

(III) attorney;

(IV) credit counselor; or

(V) housing counselor; or

[~~(vi)~~] (vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:

(a) be convicted;

(b) plead guilty or nolo contendere;

(c) enter a plea in abeyance; or

(d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

(3) A principal lending manager does not violate Subsection (1)(r) if:

(a) in contravention of the principal lending manager's written policies and instructions, an affiliated licensee of the principal lending manager violates:

(i) this chapter; or

(ii) rules made by the division under this chapter;

(b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

(c) upon learning of a violation by an affiliated licensee, the principal lending manager attempted to prevent or mitigate the damage;

(d) the principal lending manager did not participate in or ratify the violation by an affiliated licensee; and

(e) the principal lending manager did not attempt to avoid learning of the violation.

(4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.

Section 19. Section 61-2c-302 is amended to read:

61-2c-302. Record requirements.

(1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.

(2) A licensee shall maintain and safeguard in its possession a record described in Subsection (1) for four years from the last to occur of the following:

(a) the final entry on a residential mortgage loan is made by that licensee;

(b) if the residential mortgage loan is serviced by the licensee:

(i) the residential mortgage loan is paid in full; or

(ii) the licensee ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall:

(a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and

(b) upon reasonable notice from the division to a licensee, produce all records described in

Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are sponsored by the entity.

(5) (a) A licensee who engages in an activity as a mortgage loan originator shall maintain a report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition to the nationwide database.

(b) Upon request by the division, a mortgage loan originator shall produce a report of condition for inspection by the division.

Section 20. Section 61-2c-402 is amended to read:

61-2c-402. Disciplinary action.

(1) Subject to the requirements of Section 61-2c-402.1, the commission, with the concurrence of the division, may impose a sanction described in Subsection (2) against a person if the person:

(a) (i) is a licensee or person required to be licensed under this chapter; and

(ii) violates this chapter; or

(b) (i) is a certified education provider or person required to be certified to provide prelicensing or continuing education under this chapter; and

(ii) violates this chapter.

(2) The commission, with the concurrence of the director, may against a person described in Subsection (1):

(a) impose an educational requirement;

(b) impose a civil penalty against the individual or entity in an amount not to exceed the greater of:

(i) $5,000 for each violation; or

(ii) the amount equal to any gain or economic benefit derived from each violation;

(c) deny an application for an original license;

(d) do any of the following to a license under this chapter:

(i) suspend;

(ii) revoke;

(iii) place on probation;

(iv) deny renewal;

(v) deny reinstatement; or

(vi) in the case of a denial of a license or a suspension that extends to the expiration date of a license, set a waiting period for a person to apply for a license under this chapter;

(e) issue a cease and desist order;

(f) require the reimbursement of the division of costs incurred by the division related to the recovery, storage, or destruction of a record that the person disposes of in a manner that violates this chapter or a rule made under this chapter;

(g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds that the person complies with court ordered restitution; or

(h) impose any combination of sanctions described in this Subsection (2).

(3) (a) If the commission, with the concurrence of the division, issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(b) If a person fails to comply with a stated deadline:

(i) the person's license or certificate is automatically suspended:

(A) beginning the day specified in the order as the deadline for compliance; and

(B) ending the day on which the person complies in full with the order; and

(ii) if the person fails to pay a fine required by an order, the division may begin a collection process:

(A) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(B) subject to Title 63A, Chapter 8, Office of State Debt Collection.

(4) (a) A person whose license was revoked under this chapter before May 11, 2010, may request that the revocation be converted to a suspension under this Subsection (4):

(i) if the revocation was not as a result of a felony conviction involving fraud, misrepresentation, ~~[or]~~ deceit, dishonesty, breach of trust, or money laundering; and

(ii) by filing a written request with the division.

(b) Upon receipt of a request to convert a revocation under this Subsection (4), the commission, with the concurrence of the director, shall determine whether to convert the revocation.

(c) The commission may delegate to the division the authority to make a decision on whether to convert a revocation.

(d) If the division, acting under Subsection (4)(c), denies a request to convert a revocation, the person who requests the conversion may appeal the decision in a hearing conducted by the commission:

(i) after the division denies the request to convert the revocation; and

(ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(e) The commission may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d).

Section 21. Section 61-2c-501.5 is amended to read:

61-2c-501.5. Definitions.

As used in this part:

(1) "Civil judgment" means a judgment in a civil action that:

(a) is awarded in an action brought against a [~~real estate licensee~~] person licensed under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage loan transaction; and

(b) awards actual damages.

(2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a [~~real estate licensee~~] person licensed under this chapter for a criminal offense involving fraud, misrepresentation, or deceit in a residential mortgage loan transaction.

(3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:

(a) a civil judgment; or

(b) a criminal restitution judgment.

(4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501.

Section 22. Section 61-2c-507 is amended to read:

61-2c-507. Division subrogated -- Authority to revoke license.

(1) If the division pays a person from the fund in accordance with this part:

(a) the division is subrogated to the rights of that person for the amounts paid out of the fund; and

(b) any amount and interest recovered by the division shall be deposited in the fund.

(2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically revoked as of the earlier of the day on which:

(i) the division is ordered by a court to pay from the fund; or

(ii) the division pays from the fund.

(b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the revocation in a de novo hearing conducted by the commission:

(A) after the revocation; and

(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(ii) The commission may delegate:

(A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or

(B) to the division the authority to make a decision on whether relief from a revocation should be granted.

(3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee pays into the fund:

(a) the amount paid out of the fund on behalf of the licensee; and

(b) interest at a rate determined by the division with the concurrence of the commission.

Section 23. Section 61-2e-102 is amended to read:

61-2e-102. Definitions.

As used in this chapter:

(1) "Applicable appraisal standards" means:

(a) the Uniform Standards for Professional Appraisal Practice:

(i) published by the Appraisal Foundation; and

(ii) as adopted under Section [~~61-2b-27~~] 61-2g-403;

(b) Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act; and

(c) rules made by the board under Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

(2) "Appraisal" is as defined in Section [~~61-2b-2~~] 61-2g-102.

(3) "Appraisal foundation" is as defined in Section [~~61-2b-2~~] 61-2g-102.

(4) "Appraisal management company" means an entity that serves as a third-party broker of an appraisal service between a client and an appraiser by:

(a) [~~administers~~] administering a network of appraisers to perform real estate appraisal activities for one or more clients;

(b) (i) [~~receives~~] receiving a request for a real estate appraisal activity from a client; and

(ii) for a fee paid by the client, [~~enters~~] entering into an agreement with one or more appraisers to perform the real estate appraisal activity contained in the request; or

[~~(c) otherwise serves as a third-party broker of an appraisal management service between a client and an appraiser.~~]

(c) any other means.

(5) "Appraisal management service" means a process of:

(a) receiving a request for the performance of a real estate appraisal activity from a client; and

(b) for a fee paid by the client, entering into an agreement with one or more appraisers to perform the real estate appraisal activity contained in the request.

(6) "Appraisal report" is as defined in Section [~~61-2b-2~~] 61-2g-102.

(7) "Appraiser" means an individual who engages in a real estate appraisal activity.

(8) "Appraiser panel" means a group of appraisers that are selected by an appraisal management company to perform real estate appraisal activities for the appraisal management company.

(9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is created in Section [~~61-2b-7~~] 61-2g-204.

(10) "Client" means a person that enters into an agreement with an appraisal management company for the performance of a real estate appraisal activity.

(11) "Concurrence" means that the entities that are given a concurring role must jointly agree before an action may be taken.

[~~(11)~~] (12) "Controlling person" means:

(a) an owner, officer, or director of an entity seeking to offer appraisal management services;

(b) an individual employed, appointed, or authorized by an appraisal management company who has the authority to:

(i) enter into a contractual relationship with a client for the performance of an appraisal management service; and

(ii) enter into an agreement with an appraiser for the performance of a real estate appraisal activity; or

(c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

[~~(12)~~] (13) "Director" means the director of the division.

[~~(13)~~] (14) "Division" means the Division of Real Estate of the Department of Commerce.

[~~(14)~~] (15) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in Subsections [~~(14)~~] (15)(a) through (e).

[~~(15)~~] (16) "Person" means an individual or an entity.

[~~(16)~~] (17) "Real estate appraisal activity" is as defined in Section [~~61-2b-2~~] 61-2g-102.

Section 24. Section 61-2e-103 is amended to read:

61-2e-103. Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules, with the concurrence of the division, that are:

(1) consistent with this chapter; and

(2) necessary to implement this chapter.

Section 25. Section 61-2e-202 is amended to read:

61-2e-202. Initial registration process.

(1) (a) To register under this chapter as an appraisal management company, an entity shall:

(i) file with the division a registration application in a form prescribed by the division;

(ii) pay to the division a fee determined in accordance with Section 63J-1-504;

(iii) if the entity is not a resident of this state, submit an irrevocable consent for service of process meeting the requirements of Subsection (3); and

(iv) have the application for registration approved by the division.

(b) The division shall approve an application if the division finds that the entity:

(i) complies with this Subsection (1); and

(ii) meets the qualifications under Section 61-2e-201.

(c) The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated in this chapter.

(d) If an entity pays a fee or costs to the division with a negotiable instrument or other method that is not honored for payment:

(i) the transaction for which the payment is submitted is voidable by the division;

(ii) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(iii) the entity's registration is automatically suspended:

(A) beginning the day on which the payment is due; and

(B) ending the day on which payment is made in full.

(2) A registration application shall include the following:

(a) the name of the entity seeking registration;

(b) a business address of the entity seeking registration;

(c) telephone contact information of the entity seeking registration;

(d) if the entity is not an entity domiciled in this state, the name and contact information for the entity's agent for service of process in this state;

(e) for each individual who owns 10% or more of the entity:

(i) the individual's name, address, and contact information;

(ii) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(iii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application;

(f) the name, address, and contact information for each controlling person;

(g) for the controlling person designated as the contact as required by Section 61-2e-201:

(i) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(ii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application;

(h) provide an explanation required by:

(i) Section 61-2e-301, related to adding an individual to an appraiser panel;

(ii) Section 61-2e-302, related to the review of the work of an appraiser; and

(iii) Section 61-2e-303, related to recordkeeping; and

(i) any other information required by the board.

(3) An irrevocable consent for service of process required to be filed under Subsection (1) shall provide that process may be served on the entity by delivering the process to the director if:

(a) the service of process is for an action:

(i) in a court of this state against an entity; and

(ii) arising out of an act governed by this chapter; and

(b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the entity.

Section 26. Section 61-2e-203 is amended to read:

61-2e-203. Criminal background check -- Conditional registration -- Changes in ownership or controlling person.

(1) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an individual described in Subsection 61-2e-202[~~(1)~~](2)(e) or (g) through the national criminal history system or any successor system.

(2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of the criminal background check and the fingerprinting.

(b) [~~Monies~~] Money paid to the division by an entity for the cost of a criminal background check [~~are~~] is nonlapsing.

(3) (a) A registration issued under Section 61-2e-202 is conditional, pending completion of a criminal background check.

(b) [~~If~~] (i) A registration shall be immediately and automatically revoked if a criminal background check discloses that an individual described in Subsection 61-2e-202[~~(1)~~](2)(e) or (g) fails to accurately disclose a criminal history[~~, the registration is immediately and automatically revoked.~~] involving:

(A) the appraisal industry;

(B) the appraisal management industry; or

(C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.

(ii) If a criminal background check discloses that an individual described in Subsection 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in Subsection (3)(b)(i), the division shall review the application, and in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(A) place a condition on a registration;

(B) place a restriction on a registration;

(C) revoke a registration; or

(D) refer the application to the board for a decision.

(c) An entity whose conditional registration is revoked under [~~this~~] Subsection (3)(b)(i) or whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to a post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to challenge the revocation.

(d) The board shall decide whether relief from the revocation of a registration under this Subsection (3) will be granted, except that relief from [~~a~~] an automatic revocation under [~~this~~] Subsection (3)(b)(i) may be granted only if:

(i) the criminal history upon which the revocation is based:

(A) did not occur; or

(B) is the criminal history of another individual;

(ii) (A) the revocation is based on a failure to accurately disclose a criminal history; and

(B) the entity has a reasonable good faith belief at the time of application that there is no criminal history to be disclosed; or

(iii) the division fails to follow the prescribed procedure for the revocation.

(e) The board may delegate to the division the authority to conduct a post-revocation hearing under Subsection (3)(d).

[~~(e)~~] (f) If a registration is revoked or a revocation under this Subsection (3) is upheld after a post-revocation hearing, the entity may not apply for a new registration until at least 12 months after the day on which the registration is revoked.

(4) (a) An appraisal management company shall comply with this Subsection (4) if there is a change in:

(i) an individual who owns 10% or more of the entity; or

(ii) the controlling person designated as the contact as required by Section 61-2e-201.

(b) If there is a change in an individual described in Subsection (4)(a), within 30 days of the day on which the change occurs, the appraisal management company shall file with the division:

(i) the individual's name, address, and contact information;

(ii) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(iii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

Section 27. Section 61-2e-204 is amended to read:

61-2e-204. Renewal of a registration.

(1) (a) A registration under this chapter expires two years from the day on which the registration is filed.

(b) Notwithstanding Subsection (1)(a), the time period of a registration may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a registration under this chapter, before the day on which the registration expires, an appraisal management company shall:

(a) file with the division a renewal registration application on a form prescribed by the division; and

(b) pay to the division a fee determined in accordance with Section 63J-1-504.

(3) A renewal registration application shall include substantially similar information to the information required under Section 61-2e-202, except that for an individual described in Subsection 61-2e-202[~~(1)~~](2)(e) or (g), the entity is required to report whether the individual has had:

(a) (i) a conviction of a criminal offense;

(ii) the entry of a plea in abeyance to a criminal offense; or

(iii) the potential resolution of a criminal case by:

(A) a diversion agreement; or

(B) another agreement under which a criminal charge is held in suspense for a period of time;

(b) a filing of personal bankruptcy or bankruptcy of a business that transacts the appraisal management services;

(c) the suspension, revocation, surrender, cancellation, or denial of a professional license or certification, whether the license or registration is issued by this state or another jurisdiction; or

(d) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the individual by a court or government agency; and

(ii) on the basis of:

(A) conduct or a practice involving the business of appraisal management services; or

(B) conduct involving fraud, misrepresentation, or deceit.

(4) A registration expires if it is not renewed on or before its expiration date, except that for a period of 30 days after the expiration date, the registration may be reinstated upon compliance with this section, including payment of a renewal fee and a late fee determined by the division and the board.

(5) Notwithstanding Subsection (4), the division may extend the term of a license that would expire under Subsection (4) except for the extension if:

(a) (i) the person complies with the requirements of this section to renew the registration; and

(ii) the renewal application remains pending at the time of the extension; or

(b) at the time of the extension, there is pending under this chapter a disciplinary action.

Section 28. Section 61-2e-301 is amended to read:

61-2e-301. Use of licensed or certified appraisers.

(1) An appraisal management company required to be registered under this chapter may not enter into an agreement with an appraiser for the performance of a real estate appraisal activity unless the appraiser is licensed or certified in good standing pursuant to Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

(2) (a) An appraisal management company required to be registered under this chapter shall

have a system to verify that an individual added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this state pursuant to Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

(b) As part of the registration process under Part 2, Registration, an appraisal management company shall biennially provide an explanation of the system described in Subsection (2)(a) in the form prescribed by the division.

Section 29. Section 61-2e-307 is amended to read:

61-2e-307. Prohibitions related to an appraiser.

(1) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company may not influence or attempt to influence the development, reporting, or review of an appraisal through:

(a) coercion;

(b) extortion;

(c) collusion;

(d) compensation;

(e) instruction;

(f) inducement;

(g) intimidation;

(h) bribery; or

(i) any other manner that would constitute undue influence.

(2) A violation of Subsection (1) includes doing one or more of the following for a purpose listed in Subsection (1):

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraiser;

(c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;

(d) expressly or by implication promising future business or increased compensation for an appraiser;

(e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser:

(i) a request for a real estate appraisal activity; or

(ii) the payment of consideration;

(f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:

(i) an estimated, predetermined, or desired valuation in an appraisal report; or

(ii) an estimated value or comparable sale;

(g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:

(i) an anticipated, estimated, encouraged, or desired value for a subject property; or

(ii) a proposed or target amount to be loaned to the borrower;

(h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;

(i) allowing the removal of an appraiser from an appraiser panel, without prior written notice to the appraiser as required by Section 61-2e-306;

(j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:

(i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and

(B) the reasonable basis is noted in the loan file; or

(ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards;

(k) compensating an appraiser in a manner that the person should reasonably have known would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;

(l) engaging in the business of an appraisal management company under an assumed or fictitious name not properly registered in this state;

(m) accepting a contingent fee for performing an appraisal management service if the fee is contingent on:

(i) the appraiser report having a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

(iii) the consequences resulting from the appraisal assignment; or

(n) any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(3) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company, may not require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser.

[~~(3)~~] (4) This section may not be construed to prohibit an appraisal management company from requesting that an appraiser:

(a) provide additional information about the basis for a valuation; or

(b) correct an objective factual error in an appraisal report.

[~~(4)~~] (5) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

Section 30. Section 61-2e-401 is amended to read:

61-2e-401. Division authority -- Immunity.

(1) (a) In addition to a power or duty expressly provided in this chapter, the division may:

(i) receive and act on a complaint including:

(A) taking action designed to obtain voluntary compliance with this chapter; or

(B) commencing an administrative or judicial proceeding on the division's own initiative;

(ii) investigate an entity required to be registered under this chapter, regardless of whether the entity is located in Utah; and

(iii) employ one or more investigators, clerks, or other employees or agents if:

(A) approved by the executive director; and

(B) within the budget of the division.

(b) A failure to respond to a request by the division in an investigation under this chapter is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena;

(ii) withholding evidence; or

(iii) failing to produce a document or record.

(2) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (2)(a) when due, the person's registration is automatically suspended:

(i) beginning the day on which the payment of costs is due; and

(ii) ending the day on which the costs are paid.

[~~(2)~~] (3) The division is immune from a civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act or participating in a disciplinary proceeding under this chapter if the division takes the action:

(a) without malicious intent; and

(b) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

Section 31. Section 61-2e-402 is amended to read:

61-2e-402. Enforcement -- Immunity for board.

(1) (a) The board may order disciplinary action, with the concurrence of the division, against:

(i) an entity registered under this chapter;

(ii) an entity required to be registered under this chapter; or

(iii) a controlling person of an entity described in this Subsection (1)(a).

(b) If the board, with the concurrence of the division, makes a finding described in Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division, may:

(i) revoke, suspend, or place an entity's registration on probation;

(ii) deny an entity's original registration;

(iii) deny an entity's renewal registration;

(iv) in the case of denial or revocation of a registration, set a waiting period for an applicant to apply for a registration under this chapter;

(v) order remedial education;

(vi) impose a civil penalty upon a person not to exceed the greater of:

(A) [~~$2,500~~] $5,000 for each violation; or

(B) the amount of any gain or economic benefit from a violation;

(vii) issue a cease and desist order; or

(viii) do a combination of Subsections (1)(b)(i) through (vii).

(2) Subsection (1) applies if the board finds, with the concurrence of the division, that a person has engaged in, is attempting to, or has attempted to engage in:

(a) an act that violates this chapter;

(b) an act that violates a rule made [~~by the board~~] under this chapter;

(c) procuring a registration for the person or another person by fraud, misrepresentation, or deceit;

(d) paying money or attempting to pay money other than a fee provided for by this chapter to an employee of the division to procure a registration under this chapter;

(e) an act or omission in the business of an appraisal management company that constitutes dishonesty, fraud, or misrepresentation;

(f) unprofessional conduct as defined by statute or rule; or

(g) other conduct that constitutes dishonest dealing.

(3) (a) If the board, with the concurrence of the director, issues an order that orders a fine or remedial education as part of a disciplinary action against a person, including a stipulation and order, the board shall state in the order the deadline by which the person shall comply with the fine or remedial education requirements.

(b) If a person fails to comply by the stated deadline, the person's registration shall be immediately and automatically suspended:

(i) beginning the day specified in the order as the deadline for compliance; and

(ii) ending the day on which the person complies in full with the order.

(c) If a person fails to pay a fine required by an order, the division shall begin a collection process:

(i) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) subject to Title 63A, Chapter 8, Office of State Debt Collection.

(4) To the extent permitted by federal law, the board, with the concurrence of the division, may bring a disciplinary proceeding under this chapter for a violation of 15 U.S.C. Sec. 1639e(i).

[~~(3)~~] (5) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding under this chapter if:

(a) the action is taken without malicious intent; and

(b) in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

Section 32. Section 61-2f-102 is amended to read:

61-2f-102. Definitions.

As used in this chapter:

(1) "Associate broker" means an individual who is:

(a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act set out in Subsection [~~(17)~~] (18) for valuable consideration; and

(b) licensed under this chapter as an associate broker.

(2) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.

(3) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(4) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.

[~~(4)~~] (5) "Commission" means the Real Estate Commission established under this chapter.

[~~(5)~~] (6) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.

[~~(6)~~] (7) "Condominium unit" is as defined in Section 57-8-3.

[~~(7)~~] (8) "Condominium homeowners' association" means the condominium unit owners acting as a group in accordance with declarations and bylaws.

[~~(8)~~] (9) (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.

(b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.

[~~(9)~~] (10) "Director" means the director of the Division of Real Estate.

[~~(10)~~] (11) "Division" means the Division of Real Estate.

[~~(11)~~] (12) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) any organization similar to an entity described in Subsections [~~(11)~~] (12)(a) through (h).

[~~(12)~~] (13) "Executive director" means the director of the Department of Commerce.

[~~(13)~~] (14) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

(a) engage, or offer to engage, in an act that:

(i) the person represents will assist a borrower in preventing a foreclosure; and

(ii) relates to a transaction involving the transfer of title to residential real property; or

(b) as an employee or agent of another person:

(i) solicit, or offer that the other person will engage in an act described in Subsection [~~(13)~~] (14)(a); or

(ii) negotiate terms in relationship to an act described in Subsection [~~(13)~~] (14)(a).

[~~(14)~~] (15) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

(a) act, or offer to act, on behalf of a person to:

(i) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:

(A) an increase or decrease in an interest rate;

(B) a change to the type of interest rate;

(C) an increase or decrease in the principal amount of the residential mortgage loan;

(D) a change in the number of required period payments;

(E) an addition of collateral;

(F) a change to, or addition of, a prepayment penalty;

(G) an addition of a cosigner; or

(H) a change in persons obligated under the existing residential mortgage loan; or

(ii) substitute a new residential mortgage loan for an existing residential mortgage loan; or

(b) as an employee or agent of another person:

(i) solicit, or offer that the other person will engage in an act described in Subsection [~~(14)~~] (15)(a); or

(ii) negotiate terms in relationship to an act described in Subsection [~~(14)~~] (15)(a).

[~~(15)~~] (16) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.

[~~(16)~~] (17) "Person" means an individual or entity.

[~~(17)~~] (18) "Principal broker" means an individual who is licensed as a principal broker under this chapter and who:

(a) (i) sells or lists real estate or a business opportunity for sale with the expectation of receiving valuable consideration;

(ii) buys, exchanges, or auctions real estate, [~~options~~] an option on real estate, a business opportunity, or [~~improvements~~] an improvement on real estate with the expectation of receiving valuable consideration; or

(iii) [~~who~~] advertises, offers, attempts, or otherwise holds the individual out to be engaged in the business described in Subsection [~~(17)~~] (18)(a)(i) or (ii);

(b) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate and performs an act described in Subsection [~~(17)~~] (18)(a), whether the individual's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;

(c) (i) with the expectation of receiving valuable consideration, manages property owned by another person; or

(ii) advertises or otherwise holds the individual out to be engaged in property management;

(d) with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of a transaction listed in Subsections [~~(17)~~] (18)(a) and (c);

(e) except for a mortgage lender, title insurance producer, or an employee of a mortgage lender or title insurance producer, assists or directs in the closing of a real estate transaction with the expectation of receiving valuable consideration; or

(f) (i) engages in foreclosure rescue; or

(ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in foreclosure rescue[~~; and~~].

[~~(g) is licensed as a principal broker under this chapter.~~]

[~~(18)~~] (19) (a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of real estate owned by another person or advertising or otherwise claiming to be engaged in property management by:

(i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;

(ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or

(iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the management activities associated with these rentals; or

(iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

[~~(19)~~] (20) "Real estate" includes leaseholds and business opportunities involving real property.

[~~(20)~~] (21) (a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

(b) "Regular salaried employee" does not include an individual who performs services on a project-by-project basis or on a commission basis.

[~~(21)~~] (22) "Reinstatement" means restoring a license that has expired or has been suspended.

[~~(22)~~] (23) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

[~~(23)~~] (24) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

[~~(24)~~] (25) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection [~~(17)~~] (18); and

(b) licensed under this chapter as a sales agent.

[~~(25)~~] (26) (a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:

(i) a tenancy in common; or

(ii) any other legal form of undivided estate in real property including:

(A) a fee estate;

(B) a life estate; or

(C) other long-term estate.

(b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

Section 33. Section 61-2f-105 is amended to read:

61-2f-105. Fees.

(1) In addition to when expressly authorized in another provision of this chapter, the division may charge and collect reasonable fees determined by the commission with the concurrence of the division under Section 63J-1-504 to cover the costs for:

(a) issuing a new or duplicate license;

(b) registering an entity or branch office;

(c) certifying a real estate school, course, or instructor;

(d) providing a history of a license, registration, or certification; [~~and~~]

(e) producing a certified copy of an official document, order, or other paper or transcript; and

(f) other duties required by this chapter.

(2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be deposited in the Real Estate Education, Research, and Recovery Fund.

(3) If a person pays a fee or costs to the division with a negotiable instrument [~~and the negotiable instrument~~] or other payment method that is not honored for payment:

(a) the transaction for which the payment is submitted is voidable by the division;

(b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(c) the person's license, certification, or registration is automatically suspended:

(i) beginning the day on which the payment is due; and

(ii) ending the day on which payment is made in full.

(4) (a) A fee under this chapter is in lieu of all other license fees or assessments that might otherwise be imposed or charged by the state or any of its political subdivisions upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee on a principal broker if the principal broker maintains a place of business within the jurisdiction of the political subdivision.

(b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes imposed under Title 59, Revenue and Taxation.

Section 34. Section 61-2f-202 is amended to read:

61-2f-202. Exempt persons and transactions.

(1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:

(i) an individual who as owner or lessor performs an act described in Subsection 61-2f-102[~~(17)~~](18) with reference to real estate owned or leased by that individual;

(ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs an act described in Subsection 61-2f-102[~~(17)~~](18)(a) or (b);

(iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage real estate for one employer;

(iv) an individual who performs property management services for the apartments at which that individual resides in exchange for free or reduced rent on that individual's apartment;

(v) a regular salaried employee of a condominium homeowners' association who manages real estate subject to the declaration of condominium that established the condominium homeowners' association, except that the employee may only manage real estate for one condominium homeowners' association; and

(vi) a regular salaried employee of a licensed property management company who performs support services, as prescribed by rule, for the property management company.

(b) Subsection (1)(a) does not exempt from licensing:

(i) an employee engaged in the sale of real estate regulated under:

(A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; [~~and~~] or

(B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(ii) an employee engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

(iii) an individual whose interest as an owner or lessor is obtained by that individual or transferred to that individual for the purpose of evading the application of this chapter, and not for another legitimate business reason.

(2) A license under this chapter is not required for:

(a) an isolated transaction by an individual holding a duly executed power of attorney from an owner;

(b) services rendered by an attorney in performing the attorney's duties as an attorney;

(c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting under order of a court;

(d) a trustee or employee of a trustee under a deed of trust or a will;

(e) a public utility, officer of a public utility, or regular salaried employee of a public utility, unless performance of an act described in Subsection 61-2f-102[~~(17)~~](18) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility;

(f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:

(i) the acquisition of real estate pursuant to Section 72-5-103;

(ii) the disposal of real estate pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

(II) Title 11, Cities, Counties, and Local Taxing Units; and

(B) if a regular salaried employee of a county:

(I) Title 11, Cities, Counties, and Local Taxing Units; and

(II) Title 17, Counties; and

(ii) in connection with one or more of the following:

(A) the acquisition of real estate, including by eminent domain;

(B) the disposal of real estate;

(C) services that constitute property management; or

(D) the leasing of real estate.

(3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale in accordance with:

(A) the Securities Act of 1933; or

(B) Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

Section 35. Section 61-2f-203 is amended to read:

61-2f-203. Licensing requirements.

(1) (a) Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of an applicant for:

(i) a principal broker license;

(ii) an associate broker license; or

(iii) a sales agent license.

(b) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.

(c) (i) The division, with the concurrence of the commission, shall require an applicant for:

(A) a sales agent license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours; and

(B) an associate broker or a principal broker license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours.

(ii) An hour required by this section means 50 minutes of instruction in each 60 minutes.

(iii) The maximum number of program hours available to an individual is eight hours per day.

(d) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:

(i) the fundamentals of:

(A) the English language;

(B) arithmetic;

(C) bookkeeping; and

(D) real estate principles and practices;

(ii) [~~the provisions of~~] this chapter;

(iii) the rules established by the commission; and

(iv) any other aspect of Utah real estate license law considered appropriate.

(e) (i) Three years' full-time experience as a sales agent or its equivalent is required before an applicant may apply for, and secure a principal broker or associate broker license in this state.

(ii) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide the applicant's Social Security number, which is a private record under Subsection 63G-2-302(1)(h).

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with [~~all the provisions of~~] this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

(i) complying with [~~all the provisions of~~] this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) [~~Except as provided in Subsection 61-2f-204(1)(e)(vi), the~~] The division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

(b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained before the revocation of a real estate license.

(5) (a) Notwithstanding Subsection (1), the commission may delegate to the division the authority to:

(i) review a class or category of applications for initial or renewed licenses;

(ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

(iii) approve or deny a license application without concurrence by the commission.

(b) (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for de novo review of the [~~denial of licensure~~] application.

(ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Section 36. Section 61-2f-204 is amended to read:

61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.

(1) (a) Upon filing an application for an examination for a license under this chapter, the applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for admission to the examination.

(b) An applicant for a principal broker, associate broker, or sales agent license shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for issuance of an initial license or license renewal.

(c) A license issued under this Subsection (1) shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.

(d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

(A) a new sales agent applicant;

(B) a principal broker applicant; or

(C) an associate broker applicant.

(ii) An applicant described in this Subsection (1)(d) shall:

(A) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(iii) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant described in this Subsection (1)(d) through the national criminal history system or any successor system.

(iv) The applicant shall pay the cost of the criminal background check and the fingerprinting.

(v) Money paid to the division by an applicant for the cost of the criminal background check is nonlapsing.

(e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of the criminal background check.

(ii) A license is immediately and automatically revoked if the criminal background check discloses the applicant fails to accurately disclose a criminal history involving:

(A) the real estate industry; or

[~~(B) fraud;~~]

[~~(C) misrepresentation; or~~]

[~~(D) deceit.~~]

(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.

(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

(A) shall review the application; and

(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(I) place a condition on a license;

(II) place a restriction on a license;

(III) revoke a license; or

(IV) refer the application to the commission for a decision.

(iv) A person whose conditional license is automatically revoked under Subsection (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii) may have a hearing after the action is taken to challenge the action. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The director shall designate one of the following to act as the presiding officer in a hearing described in Subsection (1)(e)(iv):

(A) the division; or

(B) the division with the concurrence of the commission.

(vi) The decision on whether relief from an action under this Subsection (1)(e) will be granted shall be made by the presiding officer.

(vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted only if:

(A) the criminal history upon which the division based the revocation:

(I) did not occur; or

(II) is the criminal history of another person;

(B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

(II) the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division fails to follow the prescribed procedure for the revocation.

(viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a hearing, the individual may not apply for a new license until at least 12 months after the day on which the license is revoked.

(2) (a) (i) A license expires if it is not renewed on or before its expiration date.

(ii) As a condition of renewal, an active licensee shall demonstrate competence by completing 18 hours of continuing education within a two-year renewal period subject to rules made by the commission, with the concurrence of the division.

(iii) In making a rule described in Subsection (2)(c)(ii), the division and commission shall consider:

(A) evaluating continuing education on the basis of competency, rather than course time;

(B) allowing completion of courses in a significant variety of topic areas that the division and commission determine are valuable in assisting an individual licensed under this chapter to increase the individual's competency; and

(C) allowing completion of courses that will increase a licensee's professional competency in the area of practice of the licensee.

(iv) The division may award credit to a licensee for a continuing education requirement of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause, including:

(A) military service; or

(B) if an individual is elected or appointed to government service, the individual's government service during which the individual spends a substantial time addressing real estate issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) For a period of 30 days after the expiration date of a license, the license may be reinstated upon:

(i) payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504; and

(ii) providing proof acceptable to the division and the commission of the licensee having:

(A) completed the hours of education required by Subsection (2)(a); or

(B) demonstrated competence as required under Subsection (2)(a).

(c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of six hours of continuing education:

(A) in addition to the requirements for a timely renewal; and

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having:

(A) completed the hours of education required under Subsection (2)(a); or

(B) demonstrated competence as required under Subsection (2)(a).

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of 24 hours of continuing education:

(A) in addition to the requirements for a timely renewal; and

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having:

(A) completed the hours of education required by Subsection (2)(a); or

(B) demonstrated competence as required under Subsection (2)(a).

(e) The division shall relicense a person who does not renew that person's license within one year as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license; and

[~~(ii)~~] (B) the renewal application remains pending at the time of the extension[~~, there is pending under this chapter:~~]; or

[~~(A) the application for renewal of the license; or~~]

[~~(B)~~] (ii) at the time of the extension, there is pending a disciplinary action under this chapter.

(3) (a) As a condition for the activation of an inactive license that was in an inactive status at the time of the licensee's most recent renewal, the licensee shall supply the division with proof of:

(i) successful completion of the respective sales agent or principal broker licensing examination within six months [~~prior to~~] before applying to activate the license; or

(ii) the successful completion of the hours of continuing education that the licensee would have been required to complete under Subsection (2)(a) if the license had been on active status at the time of the licensee's most recent renewal.

(b) The commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish by rule:

(i) the nature or type of continuing education required for reactivation of a license; and

(ii) how long before reactivation the continuing education must be completed.

Section 37. Section 61-2f-206 is amended to read:

61-2f-206. Registration of entity or branch office -- Certification of education providers and courses -- Specialized licenses.

(1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.

(b) To register with the division under this Subsection (1), an entity shall submit to the division:

(i) an application in a form required by the division;

(ii) evidence of an affiliation with a principal broker;

(iii) evidence that the entity is registered and in good standing with the Division of Corporations and Commercial Code; and

(iv) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

(2) (a) A principal broker shall register with the division each of the principal broker's branch offices.

(b) To register a branch office with the division under this Subsection (2), a principal broker shall submit to the division:

(i) an application in a form required by the division; and

(ii) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

(3) (a) In accordance with rules made by the commission, the division shall certify:

(i) a real estate school;

(ii) a course provider; or

(iii) an instructor.

(b) In accordance with rules made by the commission, and with the concurrence of the commission, the division shall certify a continuing education course that is required under this [~~section~~] chapter.

(4) (a) Except as provided by rule, a principal broker may not be responsible for more than one registered entity at the same time.

(b) (i) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.

(ii) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.

(iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of this Subsection (4), including:

(A) prelicensing and postlicensing education requirements;

(B) examination requirements;

(C) affiliation with real estate brokerages or property management companies; and

(D) other licensing procedures.

Section 38. Section 61-2f-301 is amended to read:

61-2f-301. Reporting requirements.

(1) A licensee shall notify the division of the following by sending the division a signed statement within 10 business days of:

[~~(1)~~] (a) (i) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class B misdemeanor;

[~~(b)~~] (ii) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A misdemeanor, or class B misdemeanor; or

[~~(c)~~] (iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class B misdemeanor by:

[~~(i)~~] (A) a diversion agreement; or

[~~(ii)~~] (B) another agreement under which a criminal charge is held in suspense for a period of time;

[~~(2)~~] (b) filing a personal or brokerage bankruptcy;

[~~(3)~~] (c) the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or

[~~(4)~~] (d) the entry of a cease and desist order or a temporary or permanent injunction:

[~~(a)~~] (i) against the licensee by a court or administrative agency; and

[~~(b)~~] (ii) on the basis of:

[~~(i)~~] (A) conduct or a practice involving the business of real estate; or

[~~(ii)~~] (B) conduct involving fraud, misrepresentation, or deceit.

(2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.

Section 39. Section 61-2f-401 is amended to read:

61-2f-401. Grounds for disciplinary action.

The following acts are unlawful for a person required to be licensed under this chapter:

(1) (a) making a substantial misrepresentation;

(b) making an intentional misrepresentation;

(c) pursuing a continued and flagrant course of misrepresentation;

(d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or

(e) making a false representation or promise of a character likely to influence, persuade, or induce;

(2) acting for more than one party in a transaction without the informed consent of [~~all~~] the parties;

(3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;

(b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or

(c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;

(4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;

(b) commingling money described in Subsection (4)(a) with the person's own money; or

(c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;

(5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:

(a) with a principal broker of another jurisdiction; or

(b) as provided under:

(i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(ii) Title 16, Chapter 11, Professional Corporation Act; or

(iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

(6) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(7) failing to voluntarily furnish a copy of a document to [~~all~~] the parties before and after the execution of a document;

(8) failing to keep and make available for inspection by the division a record of each transaction, including:

(a) the names of buyers and sellers or lessees and lessors;

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

(9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:

(a) regardless of whether the criminal offense is related to real estate; and

(b) including:

(i) a conviction based upon a plea of nolo contendere; or

(ii) a plea held in abeyance to a criminal offense involving moral turpitude;

(11) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(12) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;

(13) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

(c) the rules adopted by the commission and the division;

(14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

(15) any other conduct which constitutes dishonest dealing;

(16) unprofessional conduct as defined by statute or rule;

(17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:

(a) a real estate license, registration, or certificate issued by another jurisdiction; or

(b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;

(18) failing to respond to a request by the division in an investigation authorized under this chapter, including:

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

(19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(a) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);

(20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;

(21) (a) engaging in a foreclosure rescue if not licensed under this chapter;

(b) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(c) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

[~~(c)~~] (d) requesting or requiring a person to pay a fee [~~if:~~] for a foreclosure rescue service before obtaining a written agreement:

[~~(i) the person is required to pay the fee before entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or~~]

[~~(ii) in a case when the financing that is the subject of the foreclosure rescue is foreclosed within one year from the day on which the person enters into a written agreement, the person is required to forfeit the fee for any reason;~~]

(i) between the person and the person's lender or servicer; and

(ii) by which title to the residential real estate at risk of foreclosure will be transferred;

[~~(d)~~] (e) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

(A) a government agency;

(B) the person's lender or loan servicer; or

(C) a nonprofit or charitable institution; or

[~~(e)~~] (f) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real [~~property~~] estate to the licensee or to a [~~third party~~] third-party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer; or

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor; or

(22) for an agreement for foreclosure rescue entered into on or after May 11, 2010, engaging in an act of foreclosure rescue without offering in writing to the person entering into the agreement for foreclosure rescue a right to cancel the agreement within three business days after the day on which the person enters the agreement.

Section 40. Section 61-2g-101, which is renumbered from Section 61-2b-1 is renumbered and amended to read:

CHAPTER 2g. REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT

Part 1. General Provisions

[~~61-2b-1~~]. 61-2g-101. Title.

This chapter is known as the "Real Estate Appraiser Licensing and Certification Act."

Section 41. Section 61-2g-102, which is renumbered from Section 61-2b-2 is renumbered and amended to read:

[~~61-2b-2~~]. 61-2g-102. Definitions.

(1) As used in this chapter:

(a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or identified real property.

(ii) An appraisal is classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment in accordance with the following definitions:

(A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(B) "Review assignment" means an unbiased analysis, opinion, or conclusion that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

(b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

(ii) An appraisal report is classified by the nature of the assignment as a valuation report, analysis report, or review report in accordance with the definitions provided in Subsection (1)(a)(ii).

(iii) The testimony of a person relating to the person's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered to be an oral appraisal report.

(d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the Appraisal Foundation.

(e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is established in Section [~~61-2b-7~~] 61-2g-204.

(f) "Certified appraisal report" means a written or oral appraisal report that is certified by a

state-certified general appraiser or state-certified residential appraiser.

(g) "Concurrence" means that the entities that are given a concurring role jointly agree to an action.

(h) (i) (A) "Consultation service" means an engagement to provide a real estate valuation service analysis, opinion, conclusion, or other service that does not fall within the definition of appraisal.

(B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or review assignment.

(ii) Regardless of the intention of the client or employer, if a person prepares an unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to be an appraisal and not a consultation service.

(i) "Contingent fee" means a fee or other form of compensation, payment of which is dependent on or conditioned by:

(i) the reporting of a predetermined analysis, opinion, or conclusion by the person performing the analysis, opinion, or conclusion; or

(ii) achieving a result specified by the person requesting the analysis, opinion, or conclusion.

(j) "Division" means the Division of Real Estate of the Department of Commerce.

(k) "Federally related transaction" means a real estate related transaction that is required by federal law or by federal regulation to be supported by an appraisal prepared by:

(i) a state-licensed appraiser; or

(ii) a state-certified appraiser.

(l) "Real estate" means an identified parcel or tract of land including improvements if any.

(m) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(n) "Real estate related transaction" means:

(i) the sale, lease, purchase, investment in, or exchange of real property or an interest in real property, or the financing of such a transaction;

(ii) the refinancing of real property or an interest in real property; or

(iii) the use of real property or an interest in real property as security for a loan or investment, including mortgage-backed securities.

(o) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(p) "State-certified general appraiser" means a person who holds a current, valid certification as a state-certified general appraiser issued under this chapter.

(q) "State-certified residential appraiser" means a person who holds a current, valid certification as a state-certified residential real estate appraiser issued under this chapter.

(r) "State-licensed appraiser" means a person who holds a current, valid license as a state-licensed appraiser issued under this chapter.

(s) "Trainee" means an individual who:

(i) does not hold an appraiser license or appraiser certification issued under this chapter;

(ii) works under the direct supervision of a state-certified appraiser to earn experience for licensure; and

(iii) is registered as a trainee under this chapter.

(t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property that is prepared by a person who is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested [~~third party~~] third-party in rendering the analysis, opinion, or conclusion.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 42. Section 61-2g-103, which is renumbered from Section 61-2b-25 is renumbered and amended to read:

[~~61-2b-25~~]. 61-2g-103. Other law unaffected.

This chapter may not be considered to prohibit a person approved, licensed, certified, or registered under this chapter from engaging in the practice of real estate appraising as a professional corporation or a limited liability company in accordance with:

(1) Title 16, Chapter 11, Professional Corporation Act; or

(2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

Section 43. Section 61-2g-201, which is renumbered from Section 61-2b-6 is renumbered and amended to read:

Part 2. Division and Board

[~~61-2b-6~~]. 61-2g-201. Duties and powers of division in general.

(1) The division shall administer and enforce this chapter.

[~~(1)~~] (2) The division has the following powers and duties [~~listed in this Subsection (1).~~]:

(a) The division shall:

(i) receive an application for licensing, certification, or registration;

(ii) establish appropriate administrative procedures for the processing of an application for licensure, certification, or registration;

(iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

(iv) register an individual who applies and qualifies for registration as a trainee under this chapter.

[~~(b) (i) The division shall require an individual to register with the division as a trainee before the individual acts in the capacity of a trainee earning experience for licensure.~~]

[~~(ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:~~]

[~~(A) the trainee registration required by this Subsection (1)(b); and~~]

[~~(B) renewal of the trainee registration required by this Subsection (1)(b).~~]

[~~(c)~~] (b) The division shall hold public hearings under the direction of the board.

[~~(d)~~] (c) The division may:

(i) solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers; and

(ii) administer or contract for the administration of licensing and certification examinations as may be required to carry out the division's responsibilities under this chapter.

[~~(e)~~] (d) The division shall provide administrative assistance to the board by providing to the board the facilities, equipment, supplies, and personnel that are required to enable the board to carry out the board's responsibilities under this chapter.

[~~(f)~~] (e) The division shall assist the board in improving the quality of the continuing education available to a person licensed, certified, or registered under this chapter.

[~~(g)~~] (f) The division shall assist the board with respect to the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403 when an interpretation or explanation becomes necessary in the enforcement of this chapter.

[~~(h) The division shall establish fees in accordance with Section 63J-1-504:~~]

[~~(i) for processing:~~]

[~~(A) an application for licensing, certification, or registration; and~~]

[~~(B) approval of an expert witness; and~~]

[~~(ii) for any other function required or permitted by this chapter.~~]

[~~(i) If a person pays a fee or costs to the division with a negotiable instrument and the negotiable instrument is not honored for payment:~~]

[~~(i) the transaction for which the payment is submitted is voidable by the division;~~]

[~~(ii) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and~~]

[~~(iii) the person's license, certification, or registration is automatically suspended:~~]

[~~(A) beginning the day on which the payment is due; and~~]

[~~(B) ending the day on which payment is made in full.~~]

[~~(j) The division may:~~]

[~~(i) investigate a complaint against:~~]

[~~(A) a person licensed, certified, or registered under this chapter; or~~]

[~~(B) a person required to be licensed, certified, or registered under this chapter;~~]

[~~(ii) subpoena a witness;~~]

[~~(iii) subpoena the production of a book, paper, document, record, contract, or evidence;~~]

[~~(iv) administer an oath; and~~]

[~~(v) take testimony and receive evidence concerning a matter within the division's jurisdiction.~~]

[~~(k)~~] (g) The division may:

(i) promote research and conduct studies relating to the profession of real estate appraising; and

(ii) sponsor real estate appraisal educational activities.

[~~(l)~~] (h) The division shall adopt, with the concurrence of the board, rules for the administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this state or of the United States.

[~~(m)~~] (i) The division shall employ an appropriate staff to investigate allegations that a person required to be licensed, certified, or registered under this chapter fails to comply with this chapter.

[~~(n)~~] (j) The division may employ other professional, clerical, and technical staff as may be necessary to properly administer the work of the division under this chapter.

[~~(o)~~] (k) (i) Upon request, the division shall make available, either directly or through a [~~third party~~] third-party, a list of the names and addresses of the persons licensed, registered, or certified by the division under this chapter.

(ii) A person who requests a list under this Subsection [~~(1)(o)~~] (2)(k) shall pay the costs incurred by the division to make the list available.

[~~(2) (a) The division shall approve an expert witness who is not otherwise licensed or certified under this chapter to appear in an administrative or judicial tax proceeding to provide evidence related to the valuation of real property that is assessed by the State Tax Commission, if the:~~]

[~~(i) approval is limited to a specific proceeding;~~]

[~~(ii) approval is valid until the proceeding becomes final;~~]

[~~(iii) applicant pays to the division an approval fee set by the division in accordance with Section 63J-1-504;~~]

[~~(iv) applicant provides the applicant's name, address, occupation, and professional credentials; and~~]

[~~(v) applicant provides a notarized statement that:~~]

[~~(A) the applicant is competent to render an appraisal and to testify as an expert witness in the proceeding; and~~]

[~~(B) the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.~~]

[~~(b) Subsection (2)(a) applies to an administrative or judicial property tax proceeding related to the valuation of real property that is assessed by the State Tax Commission.~~]

(3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act of, or participating in a disciplinary proceeding concerning:

(i) a person required to be licensed, certified, or registered pursuant to this chapter; or

(ii) a person approved as an expert witness pursuant to this chapter.

(b) This Subsection (3) applies if the division takes the action:

(i) without malicious intent; and

(ii) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

[~~(4) (a) An individual applying to register as a trainee under this chapter shall:~~]

[~~(i) submit a fingerprint card in a form acceptable to the division at the time of applying for registration; and~~]

[~~(ii) consent to a criminal background check by:~~]

[~~(A) the Utah Bureau of Criminal Identification; and~~]

[~~(B) the Federal Bureau of Investigation.~~]

[~~(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an applicant through a national criminal history system.~~]

[~~(c) The applicant shall pay the cost of:~~]

[~~(i) the fingerprinting required by this section; and~~]

[~~(ii) the criminal background check required by this section.~~]

[~~(d) (i) A registration as a trainee under this chapter is conditional pending completion of the criminal background check required by this Subsection (4).~~]

[~~(ii) A registration is immediately and automatically revoked if a criminal background check discloses that the applicant fails to accurately disclose a criminal history involving:~~]

[~~(A) the appraisal industry;~~]

[~~(B) fraud;~~]

[~~(C) misrepresentation; or~~]

[~~(D) deceit.~~]

[~~(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:~~]

[~~(A) shall review the application; and~~]

[~~(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:~~]

[~~(I) place one or more conditions on a registration;~~]

[~~(II) place one or more restrictions on a registration;~~]

[~~(III) revoke a registration; or~~]

[~~(IV) refer the application to the board for a decision.~~]

[~~(iv) An individual whose conditional registration is automatically revoked under Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under Subsection (4)(d)(iii) may appeal the action in a hearing conducted by the board:~~]

[~~(A) after the action is taken; and~~]

[~~(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~]

[~~(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d)(iv).~~]

[~~(vi) Relief from an automatic revocation under Subsection (4)(d)(ii) may be granted only if:~~]

[~~(A) the criminal history upon which the division bases the revocation:~~]

[~~(I) did not occur; or~~]

[~~(II) is the criminal history of another person;~~]

[~~(B) (I) the revocation is based on a failure to accurately disclose a criminal history; and~~]

[~~(II) the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or~~]

[~~(C) the division fails to follow the prescribed procedure for the revocation.~~]

[~~(e) If a registration is revoked or a revocation is upheld after a hearing described in Subsection (4)(d)(iv), the individual may not apply for a new registration for a period of 12 months after the day on which the registration is revoked.~~]

[~~(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.~~]

[~~(g) Money paid by an applicant for the cost of the criminal background check is nonlapsing.~~]

Section 44. Section 61-2g-202, which is renumbered from Section 61-2b-37 is renumbered and amended to read:

[~~61-2b-37~~]. 61-2g-202. Division service fees -- Federal registry fees.

(1) The division, with the concurrence of the board, shall establish and collect fees in accordance with Section 63J-1-504 for its services under this chapter.

(2) The division shall collect the annual registry fee established by the Federal Financial Institutions Examinations Council from those certificate holders who seek to perform appraisals in federally related transactions. The division shall transmit the fees to the federal Appraisal Subcommittee at least annually.

(3) If a person pays a fee or costs to the division with a negotiable instrument or any other payment method that is not honored:

(a) the transaction for which the payment is submitted is voidable by the division;

(b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(c) the person's license, certification, or registration is automatically suspended:

(i) beginning the day on which the payment is due; and

(ii) ending the day on which payment is made in full.

Section 45. Section 61-2g-203, which is renumbered from Section 61-2b-38 is renumbered and amended to read:

[~~61-2b-38~~]. 61-2g-203. Division to publish roster of appraisers.

(1) The division shall prepare and issue at least once each calendar year a roster of appraisers containing the information required by the Federal Financial Institutions Examination Council. The division shall transmit the roster to the Federal Financial Institutions Examinations Council at least annually.

(2) The division may, upon payment of a fee established by the division in accordance with Section 63J-1-504, issue to a person a verified history of a person:

(a) licensed, certified, or registered under this chapter; or

(b) previously registered, licensed, or certified under this chapter.

Section 46. Section 61-2g-204, which is renumbered from Section 61-2b-7 is renumbered and amended to read:

[~~61-2b-7~~]. 61-2g-204. Real Estate Appraiser Licensing and Certification Board.

(1) (a) There is established a Real Estate Appraiser Licensing and Certification Board [~~which shall consist~~] that consists of five regular members as follows:

(i) one state-licensed or state-certified appraiser who may be either a residential or general licensee or certificate holder;

(ii) one state-certified residential appraiser;

(iii) one state-certified general appraiser;

(iv) one member who is certified as either a state-certified residential appraiser or a state-certified general appraiser; and

(v) one member of the general public.

(b) A state-licensed or state-certified appraiser may be appointed as an alternate member of the board.

(c) The governor shall appoint all members of the board with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term beginning on July 1.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Upon the expiration of a member's term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor.

(d) A person may not serve as a member of the board for more than two consecutive terms.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The governor may remove a [~~board~~] member for cause.

(4) The public member of the board may not be licensed or certified under this chapter.

(5) The board shall meet at least quarterly to conduct its business. [~~Public notice shall be given~~

~~for all board meetings.~~] The division shall give public notice of a board meeting.

(6) The members of the board shall elect a chair annually from among the members to preside at board meetings.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) Three members of the board shall constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting, the alternate member of the board, if any, shall serve as a regular member of the board for that meeting if with the presence of the alternate member a quorum is present at the meeting.

Section 47. Section 61-2g-205, which is renumbered from Section 61-2b-8 is renumbered and amended to read:

[~~61-2b-8~~]. 61-2g-205. Duties of board.

(1) (a) The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications.

(b) The board has the powers and duties listed in this section.

(2) The board shall:

(a) determine the experience and education requirements appropriate for a person licensed under this chapter;

(b) determine the experience and education requirements appropriate for a person certified under this chapter:

(i) in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(ii) consistent with the intent of this chapter;

(c) determine the appraisal related acts that may be performed by:

(i) a trainee on the basis of the trainee's education and experience;

(ii) clerical staff; and

(iii) a person who:

(A) does not hold a license or certification; and

(B) assists an appraiser licensed or certified under this chapter in providing appraisal services or consultation services;

(d) determine the procedures for a trainee to register and to renew a registration with the division; and

(e) develop one or more programs to upgrade and improve the experience, education, and examinations as required under this chapter.

(3) (a) The experience and education requirements established by the board for a person licensed or certified under this chapter shall be the minimum criteria established by the Appraisal Qualification Board, unless, after notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this state.

(b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are not appropriate, the board shall recommend appropriate criteria to the Legislature.

(4) The board shall:

(a) determine the continuing education requirements appropriate for the renewal of a license, certification, or registration issued under this chapter, except that the continuing education requirements established by the board shall at least meet the minimum criteria established by the Appraisal Qualification Board;

(b) develop one or more programs to upgrade and improve continuing education; and

(c) recommend to the division one or more available continuing education courses that meet the requirements of this chapter.

(5) (a) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403 when:

(i) an interpretation or explanation is necessary in the enforcement of this chapter; and

(ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an interpretation or explanation.

(b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section [~~61-2b-27~~] 61-2g-403, and with the concurrence of the division, provide for an exemption from a provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

(6) (a) The board shall conduct an administrative hearing, not delegated by the board to an administrative law judge, in connection with a disciplinary proceeding under [~~Sections 61-2b-30 and 61-2b-31~~] Section 61-2g-504 concerning:

(i) a person required to be licensed, certified, or registered under this chapter; and

(ii) the person's failure to comply with this chapter and the Uniform Standards of Professional

Appraisal Practice as adopted under Section [~~61-2b-27~~] 61-2g-403.

(b) The board, with the concurrence of the division, shall issue in an administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person required to be licensed, certified, or registered under this chapter has violated this chapter, the division shall implement disciplinary action determined [~~by~~] through concurrence of the board and the division.

(7) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding concerning a person required to be registered, licensed, certified, or approved as an expert under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

(8) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of an applicant for:

(a) original licensure, certification, or registration; and

(b) renewal licensure, certification, or registration.

Section 48. Section 61-2g-301, which is renumbered from Section 61-2b-3 is renumbered and amended to read:

Part 3. Licensure, Certification, or Registration

[~~61-2b-3~~]. 61-2g-301. License or certification required.

(1) Except as provided in Subsection (2) and in [~~Subsection 61-2b-6(2)~~] Section 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being licensed or certified in accordance with this chapter.

(2) This section does not apply to:

(a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives an opinion:

(i) regarding the value of real estate;

(ii) to a potential seller or [~~third party~~] third-party recommending a listing price of real estate; or

(iii) to a potential buyer or [~~third party~~] third-party recommending a purchase price of real estate;

(b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;

(c) an official or employee of a government agency while acting solely within the scope of the official's or employee's duties, unless otherwise required by Utah law;

(d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;

(e) an individual, except an individual who is required to be licensed or certified under this chapter, who states an opinion about the value of property in which the person has an ownership interest;

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

(g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion; or

(h) an attorney authorized to practice law in this state who, in the course of the attorney's practice, uses an appraisal report governed by this chapter or who states an opinion of the value of real estate.

(3) An opinion of value or report containing value conclusions exempt under Subsection (2) may not be referred to as an appraisal.

(4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an individual shall:

(a) apply in writing for licensure or certification as provided in this chapter in the form as the division may prescribe; and

(b) become licensed or certified under this chapter.

Section 49. Section 61-2g-302 is enacted to read:

61-2g-302. Registration as trainee.

(1) (a) An individual is required to register with the division as a trainee before the individual acts in the capacity of a trainee earning experience for licensure.

(b) Subject to Subsection (2), the board, with the concurrence of the division, shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

(i) the trainee registration required by this Subsection (1); and

(ii) renewal of the trainee registration required by this Subsection (1).

(2) (a) An individual applying to register as a trainee under this chapter shall:

(i) submit a fingerprint card in a form acceptable to the division at the time of applying for registration; and

(ii) consent to a criminal background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an applicant through a national criminal history system.

(c) The applicant shall pay the cost of:

(i) the fingerprinting required by this section; and

(ii) the criminal background check required by this section.

(d) (i) A registration as a trainee under this chapter is conditional pending completion of the criminal background check required by this Subsection (2).

(ii) A registration is immediately and automatically revoked if a criminal background check discloses that the applicant fails to accurately disclose a criminal history involving:

(A) the appraisal industry; or

(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.

(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall review the application, and in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(A) place one or more conditions on a registration;

(B) place one or more restrictions on a registration;

(C) revoke a registration; or

(D) refer the application to the board for a decision.

(iv) An individual whose conditional registration is automatically revoked under Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:

(A) after the action is taken; and

(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(d)(iv).

(vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted only if:

(A) the criminal history upon which the division bases the revocation did not occur or is the criminal history of another person;

(B) the revocation is based on a failure to accurately disclose a criminal history, and the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division fails to follow the prescribed procedure for the revocation.

(e) If a registration is revoked or a revocation is upheld after a hearing described in Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12 months after the day on which the registration is revoked.

(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

(g) Money paid by an applicant for the cost of the criminal background check is nonlapsing.

Section 50. Section 61-2g-303 is enacted to read:

61-2g-303. Approval of an expert.

(1) The division shall approve an expert witness who is not otherwise licensed or certified under this chapter to appear in an administrative or judicial tax proceeding to provide evidence related to the valuation of real property that is assessed by the State Tax Commission, if the:

(a) approval is limited to a specific proceeding;

(b) approval is valid until the proceeding becomes final;

(c) applicant pays to the division an approval fee set by the division in accordance with Section 63J-1-504;

(d) applicant provides the applicant's name, address, occupation, and professional credentials; and

(e) applicant provides a notarized statement that:

(i) the applicant is competent to render an appraisal and to testify as an expert witness in the proceeding; and

(ii) the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.

(2) Subsection (1) applies to an administrative or judicial property tax proceeding related to the valuation of real property that is assessed by the State Tax Commission.

Section 51. Section 61-2g-304, which is renumbered from Section 61-2b-18 is renumbered and amended to read:

~~[61-2b-18]~~. 61-2g-304. Application for licensure, certification, or registration -- Approval as an expert witness.

(1) An application for the following shall be sent to the division on a form approved by the division:

(a) original certification, licensure, or registration;

(b) approval as an expert witness; and

(c) renewal of certification, licensure, or registration.

(2) The payment of the appropriate fee, as established by the division, with the concurrence of the board, in accordance with Section 63J-1-504, must accompany an application for:

(a) approval as an expert witness;

(b) original certification, licensure, or registration; and

(c) renewal of certification, licensure, or registration.

(3) At the time of filing an application described in Subsection (1), an applicant shall:

(a) sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by an appraiser that are established under Section [~~61-2b-27~~] 61-2g-403 for:

(i) a certified or licensed appraiser;

(ii) a trainee; or

(iii) an expert witness approved under this chapter; and

(b) certify that the applicant understands the types of misconduct, as set forth in this chapter, for which a disciplinary proceeding may be initiated against a person certified, licensed, or registered under this chapter.

Section 52. Section 61-2g-305, which is renumbered from Section 61-2b-19 is renumbered and amended to read:

[~~61-2b-19~~]. 61-2g-305. Expiration of license, certification, or registration.

(1) An initial license, certification, or registration issued under this chapter expires on the expiration date indicated on the license, certificate, or registration.

(2) A renewal license, certification, or registration issued under this chapter expires two years from the date of issuance.

(3) (a) The scheduled expiration date of a license, certification, or registration shall appear on the license, certification, or registration document.

(b) (i) The division shall mail a holder of a license, certification, or registration notice of its expiration to the last address stated on the division's records as the holder's current address.

(ii) To be mailed a notice under this Subsection (3)(b), a holder of a license, certification, or registration shall provide to the division in writing the holder's current address.

(iii) A holder's license, certification, or registration expires if not renewed by the holder notwithstanding whether the holder receives a notice of its expiration by the division under this Subsection (3)(b).

Section 53. Section 61-2g-306, which is renumbered from Section 61-2b-20 is renumbered and amended to read:

[~~61-2b-20~~]. 61-2g-306. Renewal of license, certification, or registration.

(1) To renew a license, certification, or registration, before the license, certification, or registration expires, the holder of the license, certification, or registration shall submit to the division in compliance with procedures set [~~by~~] through the concurrence of the division and the board:

(a) an application for renewal;

(b) a fee established by the division and the board, in accordance with Section 63J-1-504; and

(c) evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(2) (a) A license, certification, or registration expires if it is not renewed on or before its expiration date.

(b) For a period of 30 days after the expiration date, a license, certification, or registration may be reinstated upon:

(i) payment of a renewal fee and a late fee determined [~~by~~] through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section [~~61-2b-40~~] 61-2g-307.

(c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined [~~by~~] through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section [~~61-2b-40~~] 61-2g-307.

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined [~~by~~] through the concurrence of the division and the board in accordance with Section 63J-1-504;

(ii) providing proof acceptable to the division [~~and~~], with the concurrence of the board, of the person having satisfied the continuing education requirements of Section [~~61-2b-40~~] 61-2g-307; and

(iii) providing proof acceptable to the division [~~and~~], with the concurrence of the board, of the person completing 24 hours of continuing education:

(A) in addition to the requirements in Section [~~61-2b-40~~] 61-2g-307; and

(B) on a subject determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) The division shall relicense, recertify, or reregister a person who does not renew that person's license, certification, or registration within one year after the expiration date as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license, certification, or registration that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license, certification, or registration; and

[~~(ii)~~] (B) the application for renewal remains pending at the time of the extension[~~, there is pending under this chapter:~~]; or

[~~(A) the application for renewal of the license, certification, or registration; or~~]

[~~(B)~~] (ii) at the time of the extension, there is pending under this chapter a disciplinary action.

(3) A person who is licensed, certified, or registered under this chapter shall notify the division of the following by sending the division a signed statement within 10 business days of:

(a) (i) a conviction of a [~~criminal offense;~~]:

(A) felony;

(B) class A misdemeanor; or

(C) class B misdemeanor;

(ii) the entry of a plea in abeyance to a [~~criminal offense; or~~]:

(A) felony;

(B) class A misdemeanor; or

(C) class B misdemeanor; or

(iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class B misdemeanor by:

(A) a diversion agreement; or

(B) any other agreement under which a criminal charge is suspended for a period of time;

(b) filing a personal bankruptcy or business bankruptcy;

(c) the suspension, revocation, surrender, cancellation, or denial of a professional license, certification, or registration of the person, whether the license, certification, or registration is issued by this state or another jurisdiction; or

(d) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the person by a court or administrative agency; and

(ii) on the basis of:

(A) conduct or a practice involving an act regulated by this chapter; or

(B) conduct involving fraud, misrepresentation, or deceit.

(4) The board, with the concurrence of the division, shall enforce the reporting requirement of Subsection (3) pursuant to Section 61-2g-502.

Section 54. Section 61-2g-307, which is renumbered from Section 61-2b-40 is renumbered and amended to read:

[~~61-2b-40~~]. 61-2g-307. Continuing education requirements.

(1) As a prerequisite to renewal of a license, certification, or registration, the applicant for renewal shall present evidence satisfactory to the division of having met the continuing education requirements of this section.

(2) A person licensed, certified, or registered under this chapter shall complete during the two-year period immediately preceding the filing of an application for renewal not less than 28 classroom hours of instruction in courses or seminars that have received the approval of the division.

(3) (a) The division, with the concurrence of the board, may adopt rules for the implementation of this section to assure that [~~each~~] a person renewing that person's license, certification, or registration under this chapter has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with whom that person deals in a professional relationship under the authority of that person's license, certificate, or registration.

[~~(4)~~] (b) An amendment or repeal of a rule adopted by the division under this section, with the concurrence of the board, does not operate to deprive a person of credit toward renewal of that person's license, certification, or registration for a course of instruction that is successfully completed by the applicant before the date of the amendment or repeal of the rule.

(c) The rules made under this Subsection (3) shall prescribe:

(i) policies and procedures to be followed in obtaining division approval of courses of instruction and seminars;

(ii) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and

(iii) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.

[~~(5)~~] (4) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules, an applicant for renewal may satisfy all or part of the

continuing education requirements that are imposed by the board in excess of the minimum requirements of the Appraisal Qualification Board by presenting evidence of the following:

(a) completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) participation other than as a student in educational processes and programs approved by the board that relate to real property appraisal theory, practices, or techniques including teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials.

[~~(6) The board shall develop and propose to the division rules described in Subsection (3). The rules developed and proposed by the board under this Subsection (6) shall prescribe:~~]

[~~(a) policies and procedures to be followed in obtaining division approval of courses of instruction and seminars;~~]

[~~(b) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and~~]

[~~(c) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.~~]

[~~(7) (a)~~] (5) A person whose license, certification, or registration is [~~revoked or~~] suspended as the result of a disciplinary action taken [~~by the board~~] under this chapter may not apply for reinstatement unless the person presents evidence of completion of the continuing education requirement that is required by this chapter for renewal.

[~~(b) The continuing education required under Subsection (7)~~ (5)(a) may not be imposed upon an applicant for reinstatement who has been required by the division to successfully complete the examination for licensure or certification required by Section 61-2b-20 as a condition to reinstatement.]

Section 55. Section 61-2g-308, which is renumbered from Section 61-2b-22 is renumbered and amended to read:

[~~61-2b-22~~]. 61-2g-308. Licensing, certification, registration, or expert witness requirements for nonresidents -- Temporary license or certificate -- Revocation.

(1) An applicant for one of the following who is not a resident of this state shall submit with the applicant's application an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities governed by this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant:

(a) approval as an expert witness; or

(b) licensure, certification, or registration under this chapter.

(2) A nonresident of this state who complies with Subsection (1) may obtain approval as an expert witness, a license, a certification, or a registration in this state by complying with [~~the provisions of~~] this chapter relating to approval as an expert witness, licensure, certification, or registration.

(3) A nonresident of this state who complies with Subsection (1) may obtain a temporary permit for a license or certification to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary permit for a license or certification, an applicant must:

(a) submit an application on a form approved by the division;

(b) submit evidence that the applicant is licensed or certified in the state in which the applicant primarily conducts business;

(c) certify that no formal charges alleging violation of state appraisal licensing or certification laws have been filed against the applicant by the applicant's state of domicile; and

(d) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, with the concurrence of the board, shall make rules establishing:

(a) the duration of a temporary permit; and

(b) procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state of domicile.

(6) A person whose temporary permit for a license or certification is revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section 56. Section 61-2g-309, which is renumbered from Section 61-2b-21 is renumbered and amended to read:

[~~61-2b-21~~]. 61-2g-309. Denial of licensure, certification, or registration.

The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a license, certification, or registration to an applicant on any of the grounds enumerated in this chapter.

Section 57. Section 61-2g-310, which is renumbered from Section 61-2b-23 is renumbered and amended to read:

[~~61-2b-23~~]. 61-2g-310. Reciprocal licensure.

An applicant for licensure or certification in this state who is licensed or certified under the laws of any other state, territory, or district may obtain a license or certification in this state upon the terms and conditions determined by the division and the board, if, in the determination of the division and the board:

(1) the state, territory, or the District of Columbia is considered to have substantially equivalent licensing laws for real estate appraisers;

(2) the laws of that state, territory, or the District of Columbia accord substantially equal reciprocal rights to a person licensed or certified and in good standing in this state; and

(3) no formal charges alleging violation of state appraisal licensing or certification laws have been filed against the applicant by the applicant's state of domicile.

Section 58. Section 61-2g-311, which is renumbered from Section 61-2b-10 is renumbered and amended to read:

[~~61-2b-10~~]. 61-2g-311. State-licensed appraiser -- Authority and qualifications.

(1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

(3) A state-licensed appraiser may not issue a certified appraisal report.

(4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) demonstrate honesty, competency, integrity, and truthfulness;

(c) pass the licensing examination with a satisfactory score as determined by the Appraisal Qualification Board;

(d) successfully complete not less than 150 classroom hours in courses of study that relate to:

(i) real estate appraisal;

(ii) the Uniform Standards of Professional Appraisal Practice; and

(iii) ethical rules to be observed by a real estate appraiser as required by Section [~~61-2b-27~~] 61-2g-403; and

(e) possess the minimum number of hours of experience in real property appraisal as established by rule.

(5) The courses of study under Subsection (4)(d) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

Section 59. Section 61-2g-312, which is renumbered from Section 61-2b-13 is renumbered and amended to read:

[~~61-2b-13~~]. 61-2g-312. State-certified appraisers -- Authority.

(1) A state-certified residential appraiser is authorized to appraise [~~all~~] the types of real estate which a state-licensed appraiser is authorized to appraise.

(2) A state-certified residential appraiser is also authorized to appraise 1-4 unit residential real estate without regard to transaction value or complexity.

(3) A state-certified residential appraiser is not authorized to appraise subdivisions for which a development analysis/appraisal is necessary.

(4) A state-certified general appraiser is authorized to appraise [~~all~~] the types of real estate and real property.

Section 60. Section 61-2g-313, which is renumbered from Section 61-2b-14 is renumbered and amended to read:

[~~61-2b-14~~]. 61-2g-313. State-certified residential appraiser -- Authority and qualifications.

(1) An applicant for certification as a residential appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, and truthfulness;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) (i) an associate degree or higher degree from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university; or

(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university;

(d) satisfactory completion of not less than 200 classroom hours in a curriculum:

(i) of specific appraisal education determined by rule made by the board, with the concurrence of the division; and

(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that is approved by the Appraisal Qualification Board;

(e) the minimum number of hours of experience in real property appraisal as established by rule; and

(f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) The classroom hours required by Subsection (1)(d) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

Section 61. Section 61-2g-314, which is renumbered from Section 61-2b-15 is renumbered and amended to read:

[~~61-2b-15~~]. 61-2g-314. State-certified general appraiser -- Application -- Qualifications.

(1) An applicant for certification as a general appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, and truthfulness;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) (i) a bachelors degree or higher degree from an accredited college or university; or

(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university;

(d) satisfactory completion of not less than 300 classroom hours in a curriculum:

(i) of specific appraisal education determined by rule; and

(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that has been approved by the Appraisal Qualification Board;

(e) the minimum number of hours of experience in real property appraisal as established by rule; and

(f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) The classroom hours required by Subsection (1)(d) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

Section 62. Section 61-2g-315, which is renumbered from Section 61-2b-24 is renumbered and amended to read:

[~~61-2b-24~~]. 61-2g-315. Expert witness, licensing, certification, and registration documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension.

(1) The division shall issue to a person approved as an expert witness, licensed, certified, or registered under this chapter a document:

(a) stating that the person is approved as an expert witness, licensed, certified, or registered under this chapter; and

(b) specifying the expiration date of a license or certification.

(2) (a) An approval as an expert witness, a license, a certification, or a registration document issued under this chapter shall bear an approval, license, certification, or registration number assigned by the division.

(b) An assigned number shall be used in a statement of qualification, a contract, or another instrument used by the holder of the approval, license, certificate, or registration when reference is made to the holder's status as being approved, licensed, certified, or registered under this chapter.

(3) (a) An approval, license, certification, or registration document is the property of the state.

(b) Upon a suspension or revocation of a license, certification, or registration under this chapter, the individual holding the applicable document shall immediately return the document to the division.

Section 63. Section 61-2g-401, which is renumbered from Section 61-2b-17 is renumbered and amended to read:

Part 4. Operational Restrictions

[~~61-2b-17~~]. 61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of terms -- Conduct prohibited or required -- Trainee.

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," and "state-licensed appraiser":

(i) may only be used to refer to an individual who is certified or licensed under this chapter; and

(ii) may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified or licensed under this chapter.

(b) The requirement of this Subsection (1) may not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that:

(i) only the individual is certified; and

(ii) the corporation, partnership, firm, or group practice is not certified.

(c) Except as provided in Section [~~61-2b-25~~] 61-2g-103, a certificate or license may not be issued under this chapter to a corporation, partnership, firm, or group.

(2) (a) A person other than a state-certified general appraiser or state-certified residential appraiser, may not assume or use any title, designation, or abbreviation likely to create the impression of certification in this state as a real estate appraiser.

(b) A person other than a state-licensed appraiser may not assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of this chapter is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately following the signature on the report, "State-Licensed Appraiser."

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on the report, immediately below the state-certified appraiser's signature the state-certified appraiser's certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside the state-certified residential appraiser's authority as defined in Section [~~61-2b-13~~] 61-2g-312.

(g) A state-licensed appraiser who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under this chapter may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms "certified appraisal" or "certified appraisal report."

(5) If a trainee assists a state-certified appraiser in the preparation of an appraisal report, the appraisal report shall disclose:

(a) the trainee's name; and

(b) the extent to which the trainee assists in the preparation of the appraisal report.

Section 64. Section 61-2g-402, which is renumbered from Section 61-2b-26 is renumbered and amended to read:

[~~61-2b-26~~]. 61-2g-402. Principal place of business -- Display of documents -- Notify of changes -- Nonresidents.

(1) A person licensed or certified under this chapter shall:

(a) designate and maintain a principal place of business; and

(b) conspicuously display the person's license or certification.

(2) (a) Upon a change of a person's principal business location or home address, a person licensed or certified under this chapter shall promptly send the division a signed statement notifying the division of the change within 10 business days of the change.

(b) Upon a change of an expert witness's address listed on the expert witness's application for approval, the expert witness shall send the division a signed statement notifying the division of the change within 10 business days of the change.

(3) A nonresident licensee or certificate holder, or a nonresident approved as an expert witness is not required to maintain a place of business in this state if the nonresident maintains an active place of business in the nonresident's state of domicile.

Section 65. Section 61-2g-403, which is renumbered from Section 61-2b-27 is renumbered and amended to read:

[~~61-2b-27~~]. 61-2g-403. Professional conduct -- Uniform standards.

(1) (a) A person licensed, certified, registered, or approved as an expert witness under this chapter [~~must~~] shall comply with:

(i) generally accepted standards of professional appraisal practice; and

(ii) generally accepted ethical rules to be observed by a real estate appraiser.

(b) Subject to [~~Subsection (1)(c)~~] the other provisions of this Subsection (1), generally accepted standards of professional appraisal practice are evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, with the concurrence of the division:

(i) shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert witness from complying with a provision of the Uniform Standards of Professional Appraisal Practice for an activity that the person engages in on behalf of a governmental entity.

(d) When an individual is a state-licensed appraiser or state-certified appraiser and also holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual may provide an opinion of price of real estate without complying with the Uniform Standards of Professional Appraisal Practice if the individual provides the opinion of price as a licensee under Chapter 2f.

(2) [~~The~~] When instructed by the board, the division shall schedule a public hearing pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of deciding whether or not the board should require a modified or supplemental standard or the ethical rule to be observed by a person licensed, certified, registered, or approved as an expert witness under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

(a) (i) modifies the Uniform Standards of Professional Appraisal Practice;

(ii) issues a supplemental appraisal standard which it considers appropriate for:

(A) a residential real estate appraiser; or

(B) a general real estate appraiser; or

(iii) issues an ethical rule to be observed by a real estate appraiser; and

(b) requests the board to consider the adoption of the modified or supplemental standard or ethical rule.

(3) If, after the notice and public hearing described in Subsection (2), the board finds that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or approved as an expert witness under this chapter, the board shall recommend a rule requiring a person licensed, certified, registered, or approved as an expert witness under this chapter to observe the modified or supplemental standard or the ethical rule.

Section 66. Section 61-2g-404, which is renumbered from Section 61-2b-32 is renumbered and amended to read:

[~~61-2b-32~~]. 61-2g-404. Registration, licensure, or certification prerequisite to suit for compensation.

A person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff in a court of this state to collect compensation for the performance of real estate appraisal services for which registration, licensure, or certification is required by this chapter without alleging and proving that the person was the holder of a valid registration, license, or certification in this state at all times during the performance of the real estate appraisal services.

Section 67. Section 61-2g-405, which is renumbered from Section 61-2b-34 is renumbered and amended to read:

[~~61-2b-34~~]. 61-2g-405. Recordkeeping requirements.

(1) Subject to Subsection (2), a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall retain for a period of five years the original or a true copy of:

(a) each written contract engaging the person's services for real estate or real property appraisal work;

(b) each appraisal report prepared or signed by the person; and

(c) [~~all~~] the supporting data assembled and formulated by the appraiser in preparing each appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and begins upon the date of the delivery of each appraisal report to the client unless, within the five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the records must be maintained for the longer of:

(a) five years; or

(b) two years following the date of the final disposition of the litigation.

(3) Upon reasonable notice, a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall make [~~all~~] the records required to be maintained under this chapter available to the division for inspection and copying.

Section 68. Section 61-2g-406, which is renumbered from Section 61-2b-36 is renumbered and amended to read:

[~~61-2b-36~~]. 61-2g-406. Contingent fees.

(1) A person licensed or certified under this chapter who enters into an agreement to perform an appraisal may not accept a contingent fee.

(2) A person licensed or certified under this chapter who enters into an agreement to provide consultation services may be paid a fixed fee or a contingent fee.

(3) (a) If a person licensed or certified under this chapter enters into an agreement to perform consultation services for a contingent fee, this fact shall be clearly stated in each oral statement.

(b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified under this chapter prepares a written consultation report or summary, letter of transmittal, or certification statement for a contingent fee, the person shall clearly state in the report, summary, letter of transmittal, or certification statement that the report is prepared under a contingent fee arrangement.

Section 69. Section 61-2g-407, which is renumbered from Section 61-2b-41 is renumbered and amended to read:

[~~61-2b-41~~]. 61-2g-407. Consultation reports -- Restrictions on use of terms.

A person who prepares a written or oral consultation report may not refer to the consultation report as an appraisal, an appraisal report, or in any manner that may be interpreted as referring to an appraisal or an appraisal report.

Section 70. Section 61-2g-501, which is renumbered from Section 61-2b-28 is renumbered and amended to read:

Part 5. Enforcement

[~~61-2b-28~~]. 61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.

(1) (a) The division may investigate the actions of:

(i) a person registered, licensed, or certified under this chapter;

(ii) an applicant for registration, licensure, or certification;

(iii) an applicant for renewal of registration, licensure, or certification; or

(iv) a person required to be registered, licensed, or certified under this chapter.

(b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

(i) impose disciplinary action;

(ii) deny issuance to an applicant of:

(A) an original registration, license, or certification; or

(B) a renewal of a registration, license, or certification; or

(iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

(i) administer an oath or affirmation;

(ii) subpoena a witness or evidence;

(iii) take evidence; and

(iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).

(b) The division may serve a subpoena by certified mail.

(c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena as a witness;

(ii) withholding evidence; or

(iii) failing to produce a book, paper, contract, document, information, or record.

(d) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.

(ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the person's license, certification, or registration is automatically suspended:

(A) beginning the day on which the payment of costs is due; and

(B) ending the day on which the costs are paid.

(3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board [~~agrees~~] and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

(i) shall issue an order making the cease and desist order permanent; and

(ii) may impose another disciplinary action under Section [~~61-2b-29~~] 61-2g-502.

(b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (3); and

(B) the person fails to cease the act described in Subsection (3); or

(ii) after discontinuing the act described in Subsection (3), the person again commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Section 71. Section 61-2g-502, which is renumbered from Section 61-2b-29 is renumbered and amended to read:

[~~61-2b-29~~]. 61-2g-502. Disciplinary action -- Grounds.

(1) (a) The board may order disciplinary action, with the concurrence of the division, against a person:

(i) registered, licensed, or certified under this chapter; or

(ii) required to be registered, licensed, or certified under this chapter.

(b) On the basis of a ground listed in Subsection (2) for disciplinary action, board action may include:

(i) revoking, suspending, or placing a person's registration, license, or certification on probation;

(ii) denying a person's original registration, license, or certification;

(iii) denying a person's renewal license, certification, or registration;

(iv) in the case of denial or revocation of a registration, license, or certification, setting a waiting period for an applicant to apply for a registration, license, or certification under this chapter;

(v) ordering remedial education;

(vi) imposing a civil penalty upon a person not to exceed the greater of:

(A) $5,000 for each violation; or

(B) the amount of any gain or economic benefit from a violation;

(vii) issuing a cease and desist order;

(viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or

(ix) doing any combination of Subsections (1)(b)(i) through (viii).

(c) (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and order, the board or division shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(ii) If a person fails to comply with a stated deadline:

(A) the person's license, certificate, or registration is automatically suspended:

(I) beginning on the day specified in the order as the deadline for compliance; and

(II) ending the day on which the person complies in full with the order; and

(B) if the person fails to pay a fine required by an order, the division may begin a collection process:

(I) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

(2) The following are grounds for disciplinary action under this section:

(a) procuring or attempting to procure a registration, license, or certification under this chapter:

(i) by fraud; or

(ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

(b) paying money or attempting to pay money other than a fee provided for by this chapter to a member or employee of the division to procure a registration, license, or certification under this chapter;

(c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;

(d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;

(f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(h) making a false or misleading statement in:

(i) that portion of a written appraisal report that deals with professional qualifications; or

(ii) testimony concerning professional qualifications;

(i) violating or disregarding:

(i) this chapter;

(ii) an order of:

(A) the board; or

(B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or

(iii) a rule issued under this chapter;

(j) violating the confidential nature of governmental records to which a person registered, licensed, certified, or approved as an expert under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:

(i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached; or

(iii) the consequences resulting from the appraisal assignment;

(l) unprofessional conduct as defined by statute or rule;

(m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(i) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2); or

(n) other conduct that constitutes dishonest dealing.

Section 72. Section 61-2g-503, which is renumbered from Section 61-2b-30.5 is renumbered and amended to read:

[~~61-2b-30.5~~]. 61-2g-503. Reinstatement of license, certification, registration, and approval.

(1) An individual whose license, certification, registration, or approval is revoked under this chapter:

(a) may not apply for renewal or reinstatement of that license, certification, registration, or approval; and

(b) may apply for licensure, certification, registration, or approval as prescribed for an original license, certification, registration, or approval subject to the limitations in Subsection (2).

(2) An applicant for licensure, certification, registration, or approval as an expert witness under Subsection (1)[~~: (a) may not apply for licensure, certification, registration, or approval until at least five years after the date of revocation of the applicant's original license, certification, registration, or approval; and (b)~~] is not entitled to credit for experience gained [~~prior to~~] before the date of revocation in determining whether the applicant meets the experience requirement for licensure, certification, registration, or approval.

[~~(3) A person whose license or certification is revoked may not act as a trainee until at least four years after the day on which the person's license or certification is revoked.~~]

Section 73. Section 61-2g-504, which is renumbered from Section 61-2b-31 is renumbered and amended to read:

[~~61-2b-31~~]. 61-2g-504. Disciplinary hearing process.

(1) The division and board shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in conducting any disciplinary proceedings under this chapter.

[~~(1)~~] (2) Before disciplinary action may be taken [~~by the board~~] under this chapter, the division shall:

(a) notify the person against whom [~~the board seeks to take~~] disciplinary action is sought; and

(b) commence an adjudicative proceeding.

[~~(2)~~] (3) If, after the hearing, the board determines, with the concurrence of the division, that a person described in Subsection [~~(1)~~] (2) violated this chapter, the board may impose disciplinary action, with the concurrence of the division, by written order as provided in Section [~~61-2b-29~~] 61-2g-502.

[~~(3)~~] (4) (a) The board may:

(i) conduct hearings with the assistance of an administrative law judge; or

(ii) delegate hearings to an administrative law judge.

(b) If a hearing is delegated by the board to an administrative law judge, the administrative law judge shall submit to the board and the director for [~~its~~] their consideration:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

[~~(4)~~] (5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved, including the complainant, may obtain judicial review of an adverse ruling, order, or decision [~~of the board~~].

(b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and the court finds that the state action is undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

Section 74. Section 61-2g-505, which is renumbered from Section 61-2b-33 is renumbered and amended to read:

[~~61-2b-33~~]. 61-2g-505. Penalty for violating this chapter -- Automatic revocation.

(1) In addition to being subject to a disciplinary action [~~by the board~~], a person required to be licensed, certified, or registered under this chapter who violates this chapter:

(a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this chapter; and

(b) is guilty of a third degree felony, upon conviction of a second or subsequent violation of this chapter.

(2) A license, certification, or registration issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Section 75. Section 63A-5-220 is amended to read:

63A-5-220. Definitions -- Creation of Account for People with Disabilities -- Use of restricted account.

(1) As used in this section:

(a) "Developmental center" means the Utah State Developmental Center described in Section 62A-5-201.

(b) "DSPD" means the Division of Services for People with Disabilities within the Department of Human Services.

(c) "Long-term lease" means:

(i) a lease with a term of five years or more; or

(ii) a lease with a term of less than five years that may be unilaterally renewed by the lessee.

(2) Notwithstanding [~~the provisions of~~] Section 63A-5-215, any money received by the division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center shall be deposited in the restricted account created in Subsection (3).

(3) (a) There is created a restricted account within the General Fund known as the "Account for People with Disabilities."

(b) The Division of Finance shall deposit the following revenues into the restricted account:

(i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center;

(ii) revenue from the sale, lease, or other disposition of water rights associated with the developmental center; and

(iii) revenue from voluntary contributions made to the restricted account.

(c) The state treasurer shall invest money in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and [~~all~~] the interest shall remain with the restricted account.

(d) (i) Except as provided in Subsection (3)(d)(ii), [~~no~~] an expenditure or appropriation may not be made from the restricted account.

(ii) (A) The Legislature may appropriate interest earned on restricted account money invested pursuant to this Subsection (3)(d), leases from real property and improvements, leases from water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services [~~to~~] for People with Disabilities.

(B) Restricted account money appropriated each year under Subsection (3)(d)(ii)(A) may not be expended unless approved by the director of the Division of Services for People with Disabilities within the Department of Human Services in consultation with the executive director of the department.

(4) (a) Notwithstanding [~~the provisions of~~] Section 65A-4-1, any sale or disposition of real property or water rights associated with the developmental center shall be conducted as provided in this Subsection (4).

(b) The division shall secure the concurrence of DSPD and the approval of the governor before making the sale or other disposition of land or water rights.

(c) In addition to the concurrences required by Subsection (4)(b), the division shall secure the approval of the Legislature before offering the land or water rights for sale, exchange, or long-term lease.

(d) The division shall sell or otherwise dispose of the land or water rights as directed by the governor.

(e) The division may not sell, exchange, or enter into a long-term lease of the land or water rights for a price or estimated value below the average of two appraisals conducted by an appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

Section 76. Section 63A-5-401 is amended to read:

63A-5-401. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the division buys, sells, or exchanges real property, the division shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

(a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

(b) with a value of less than $100,000, as estimated by the state agency.

Section 77. Section 70D-1-102 is amended to read:

70D-1-102. Definitions.

As used in this title:

(1) "Commissioner" means the commissioner of the department.

(2) "Department" means the Department of Financial Institutions.

(3) "Depository institution" is as defined in Section 7-1-103.

(4) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

(a) a condominium unit;

(b) a cooperative unit;

(c) a manufactured home; or

(d) a house.

(5) "Mortgage" means a mortgage or deed of trust affecting real property located in this state.

(6) (a) "Mortgage loan" means a loan:

(i) secured by a mortgage; and

(ii) made for personal, family, or household purposes.

(b) "Mortgage loan" does not include a loan:

(i) made by an individual to a member of the individual's family; or

(ii) subject to Title 70C, Utah Consumer Credit Code.

(7) "Mortgagor" means a person who:

(a) executes a mortgage; or

(b) is obligated to pay a mortgage loan.

(8) "Record" means information that is:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Real estate brokerage activity" means an act that involves offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate [~~agent or real estate broker~~] principal broker, associate broker, or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to the transaction;

(d) engaging in an act for which a person engaged in the activity is required to be registered or

licensed as a real estate agent or real estate broker under applicable law; and

(e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a) through (d).

(10) "State" means:

(a) a state, territory, or possession of the United States;

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

Section 78. Section 72-5-117 is amended to read:

72-5-117. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

(a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

(b) with a value of less than $100,000, as estimated by the state agency.

Section 79. Section 79-2-403 is amended to read:

79-2-403. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

(a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

(b) with a value of less than $100,000, as estimated by the state agency.

Section 80. Repealer.

This bill repeals:

Section 57-11-19, Extradition proceedings against person charged with crime.

Section 61-2b-5, Chapter administration.

Section 61-2b-9, Licensure or certification required -- Application.

Section 61-2b-30, Compliance with Administrative Procedures Act.

Section 61-2b-39, Registration, licensure, or certification history.

CHAPTER 290
H. B. 107
Passed March 8, 2011
Approved March 25, 2011
Effective May 10, 2011

VOLUNTEER FIREFIGHTERS' RETIREMENT AMENDMENTS

Chief Sponsor: Ronda Rudd Menlove
Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends the allocation of premium tax revenues to fund volunteer firefighters' long-term disability program.

Highlighted Provisions:

This bill:

- requires the Retirement Office to fund the long-term disability benefits for new firefighters using certain premium tax revenues previously deposited into the Firefighters' Retirement Trust Fund; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-902, as last amended by Laws of Utah 2008, Chapter 227
49-16-301, as last amended by Laws of Utah 2004, Chapter 262
49-23-601, as enacted by Laws of Utah 2010, Chapter 266

ENACTS:

49-11-901.5, Utah Code Annotated 1953

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

Section 1. Section 49-11-901.5 is enacted to read:

49-11-901.5. Premium tax revenues -- Distribution.

(1) (a) In accordance with this section there shall be paid to the office:

(i) 50% of the annual tax levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for property insurance, as defined under Section 31A-1-301, and as applied to fire and allied lines insurance collected by insurance companies within the state; and

(ii) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for life insurance, as defined in Section 31A-1-301, within the state.

(b) Payments to the fund shall be made annually until the service liability under this part is liquidated, after which the tax revenue provided in this Subsection (1) ceases.

(2) The office shall distribute the premium tax revenue paid under Subsection (1) as follows:

(a) an amount determined by the office to fully fund the long-term disability program provided for firefighters under Section 49-23-601;

(b) an amount determined by the office to the Firefighters' Retirement Trust Fund created under Section 49-16-104 equal to an amount when calculated as a percentage of the certified contribution rate for members in Division A and B, as defined under Section 49-16-301, is the percentage of the certified contribution rate paid to the Firefighters' Retirement Trust Fund on July 1, 2004; and

(c) any remaining amount in accordance with Section 49-11-902.

Section 2. Section 49-11-902 is amended to read:

49-11-902. Premium tax revenues -- Formula -- Deposits.

(1) [~~(a)~~] If the premium tax revenue received by the office under Subsection [~~49-16-301(6), when calculated as a percentage of the certified contribution rate for members in Division A and B, as defined under Section 49-16-301, exceeds the percentage of the certified contribution rate paid to the Firefighters' Retirement Trust Fund in accordance with Subsection 49-16-301(6) on July 1, 2004,~~] 49-11-901.5(1) and first paid in accordance with Subsections 49-11-901.5(2)(a) and (b), including any remaining amount, the office shall deposit the [~~difference~~] amount in the:

(a) Public Safety Contributory Trust Fund created under Section 49-14-104; and [~~the~~]

(b) Public Safety Noncontributory Retirement Trust Fund created under Section 49-15-104.

[~~(b) If the premium tax revenue does not exceed the percentage of the certified contribution rate paid to the Firefighters' Retirement Trust Fund in accordance with Subsection 49-16-301(6) on July 1, 2004 as calculated under Subsection (1)(a), the board may not make a deposit under Subsection (1)(a).~~]

(2) The money deposited under this section shall be used to fund an increase for retirees in the public safety retirement systems from a 2.5% maximum annual cost-of-living adjustment to a 4% maximum annual cost-of-living adjustment under Sections 49-14-403 and 49-15-403 in the public safety retirement systems.

(3) As required to implement this section, the office shall make the calculations and deposits for the equitable apportionment of money between:

(a) Division A1 and B1; and

(b) the contributory and noncontributory trust funds.

Section 3. Section 49-16-301 is amended to read:

49-16-301. Contributions -- Two divisions -- Election by employer to pay employee contributions -- Accounting for and vesting of worker contributions -- Deductions.

(1) In addition to the money paid to this system under [~~Subsection (6)~~] Section 49-11-901.5, participating employers and firefighter service employees shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, this system is divided into two divisions according to Social Security coverage as follows:

(a) members of this system with on-the-job Social Security coverage are in Division A; and

(b) members of this system without on-the-job Social Security coverage are in Division B.

(3) (a) A participating employer may elect to pay all or part of the required member contributions, in addition to the required participating employer contributions.

(b) Any amount contributed by a participating employer under this section shall vest to the member's benefit as though the member had made the contribution.

(c) The required member contributions shall be reduced by the amount that is paid by the participating employer.

(4) (a) All member contributions are credited by the office to the account of the individual member.

(b) This amount is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) All member contributions are vested and nonforfeitable.

(5) (a) Each member is considered to consent to payroll deductions of member contributions.

(b) The payment of compensation less these payroll deductions is considered to be full payment for services rendered by the member.

[~~(6) (a) Except as provided in Section 49-11-902, in addition to contribution rates described under this section, there shall be paid to the Firefighters' Retirement Trust Fund created under Section 49-16-104:~~]

[~~(i) 50% of the annual tax levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for property insurance, as defined under Section 31A-1-301, and as applied to fire and allied lines insurance collected by insurance companies within the state; and~~]

[~~(ii) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for life insurance, as defined in Section 31A-1-301, within the state.~~]

[~~(b) Payments to the fund shall be made annually until the service liability is liquidated, after which the tax revenue provided in this Subsection (6) for the Firefighters' Retirement Trust Fund ceases.~~]

Section 4. Section 49-23-601 is amended to read:

49-23-601. Long-term disability coverage.

[~~Each~~] (1) A participating employer shall cover [~~the following employees~~] a public safety employee who initially enters employment on or after July 1, 2011, under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program[~~:~~],

[~~(1) public safety employees initially entering employment on or after July 1, 2011;~~]

[~~(2) firefighter service employees initially entering employment on or after July 1, 2011; and~~]

[~~(3) volunteer firefighters.~~]

(2) (a) A participating employer shall cover a firefighter employee who initially enters employment on or after July 1, 2011, under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

(b) In accordance with this section, a participating employer shall provide long term disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.

(c) The office shall ensure that the cost of the long-term disability benefit coverage provided under Subsection (2)(a) and (b) is funded with revenue received under Section 49-11-901.5.

CHAPTER 291
H. B. 130
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011

ELECTION DAY VOTING CENTERS

Chief Sponsor: Rebecca Chavez-Houck
Senate Sponsor: Peter C. Knudson
Cosponsors: Rebecca P. Edwards
Janice M. Fisher
Julie Fisher
Brad J. Galvez
Richard A. Greenwood
Stephen G. Handy
Ronda Rudd Menlove
Jim Nielson
Curtis Oda
Lee B. Perry
Kraig Powell
Paul Ray
Holly J. Richardson
Douglas Sagers
Evan J. Vickers
Brad R. Wilson

LONG TITLE

General Description:

This bill amends the Election Code to authorize an election officer to operate an election day voting center.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes an election officer to operate a voting center at which a voter residing within the political subdivision may vote on election day;
- provides requirements for election day voting centers;
- requires a voter at an election day voting center to use a ballot that is retrievable if the voting center is not designated as a polling place for the voter's precinct;
- requires notice of an election day voting center location;
- requires the lieutenant governor to report to an interim committee;
- sets a repeal date for the reporting requirement to the interim committee; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 33, Election Law Revisions, by merging technical and substantive amendments.

Utah Code Sections Affected:

AMENDS:

20A-4-107, as last amended by Laws of Utah 2010, Chapter 197
20A-5-101, as last amended by Laws of Utah 2009, Chapter 388
20A-7-801, as enacted by Laws of Utah 2007, Chapter 83
63I-2-220, as last amended by Laws of Utah 2008, Chapter 148 and renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

20A-3-701, Utah Code Annotated 1953
20A-3-702, Utah Code Annotated 1953
20A-3-703, Utah Code Annotated 1953
20A-3-704, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

20A-4-107, as last amended by Laws of Utah 2010, Chapter 197

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

Section 1. Section 20A-3-701 is enacted to read:

Part 7. Election Day Voting Center

20A-3-701. Definitions.

As used in this part:

(1) "Election day voting center" means a polling place designated by an election officer to provide for voting on election day for a person who:

(a) is eligible to vote; and

(b) resides within the political subdivision holding the election.

(2) "Voting center ballot" means a regular ballot that:

(a) is provided at an election day voting center; and

(b) may be retrieved by the election official during the canvass if the voter cast a ballot at another location or before election day.

Section 2. Section 20A-3-702 is enacted to read:

20A-3-702. Election day voting center -- Hours of operations -- Compliance with Election Code.

(1) An election officer may operate an election day voting center in one or more locations designated under Section 20A-3-703.

(2) An election officer shall provide for voting at an election day voting center by:

(a) regular ballot if:

(i) the election day voting center is designated under Section 20A-5-403 as the polling place for the voting precinct in which the voter resides; and

(ii) the voter is eligible to vote using a regular ballot in accordance with this title;

(b) voting center ballot if:

(i) the election day voting center is not designated under Section 20A-5-403 as the polling place for the voting precinct in which the voter resides;

(ii) the voter resides within the political subdivision holding the election; and

(iii) the voter is otherwise eligible to vote using a regular ballot in accordance with this title; or

(c) provisional ballot if the voter is only eligible to vote using a provisional ballot in accordance with this title.

(3) An election officer shall ensure that an election day voting center:

(a) is open on election day during the time period specified under Section 20A-1-302;

(b) allows an eligible voter to vote if the voter:

(i) resides within the political subdivision holding an election; and

(ii) arrives at the election day voting center by the designated closing time in accordance with Section 20A-1-302; and

(c) is administered according to the requirements of this title.

Section 3. Section 20A-3-703 is enacted to read:

20A-3-703. Election day voting centers as polling places -- Location -- Notification.

The election officer may designate one or more polling places as an election day voting center if:

(1) the election officer notifies the lieutenant governor of the designation and location of an election day voting center at least 15 days before the election;

(2) a polling place meets the requirements for a polling place under Chapter 5, Election Administration; and

(3) a polling place is located in a government building or office, unless the election officer determines that there is no government building or office available, in the area designated by the election officer, that:

(a) can be scheduled for use during election day voting hours;

(b) has the physical facilities necessary to accommodate election day voting requirements;

(c) has adequate space for voting equipment, poll workers, and voters; and

(d) has adequate security, public accessibility, and parking.

Section 4. Section 20A-3-704 is enacted to read:

20A-3-704. Report by election officer.

(1) An election officer who operates an election day voting center shall provide the lieutenant governor with the information described in Subsection (2) for the election officer's political subdivision.

(2) The lieutenant governor shall report to the Government Operations Interim Committee on:

(a) the number of election day voting centers available;

(b) the number of voting center ballots cast at an election day voting center;

(c) the number of voting center ballots not counted because the voter cast a ballot at another location or before election day; and

(d) any recommendations for amendments to this part.

(3) The lieutenant governor and an election officer described in this section shall report on the use of an election day voting center during the previous general election before:

(a) November 1, 2013; and

(b) November 1, 2015.

Section 5. Section 20A-4-107 is amended to read:

20A-4-107. Review and disposition of provisional ballot envelopes.

(1) As used in this section, a voter is "legally entitled to vote" if:

(a) the voter:

(i) is registered to vote in the state;

[~~(ii) resides within the voting precinct where the voter seeks to vote; and~~]

(ii) votes the ballot for the voting precinct in which the voter resides; and

(iii) provided valid voter identification to the poll worker [~~as indicated by a notation in the official register~~];

(b) the voter:

(i) is registered to vote in the state;

(ii) (A) provided valid voter identification to the poll worker [~~as indicated by a notation in the official register~~]; or

(B) either failed to provide valid voter identification or the documents provided as valid voter identification were inadequate and the poll worker recorded that fact in the official register but the county clerk verifies the voter's identity and residence through some other means; and

(iii) did not vote in the voter's precinct of residence, but the ballot that the voter voted is identical to the ballot voted in the voter's precinct of residence; or

(c) the voter:

(i) is registered to vote in the state;

(ii) either failed to provide valid voter identification or the documents provided as valid voter identification were inadequate and the poll worker recorded that fact in the official register; and

(iii) (A) the county clerk verifies the voter's identity and residence through some other means as reliable as photo identification; or

(B) the voter provides valid voter identification to the county clerk or an election officer who is

administering the election by the close of normal office hours on Monday after the date of the election.

(2) (a) Upon receipt of provisional ballot envelopes, the election officer shall review the affirmation on the face of each provisional ballot envelope and determine if the person signing the affirmation is a registered voter and legally entitled to vote the ballot that the voter voted.

(b) If the election officer determines that the person is not a registered voter or is not legally entitled to vote the ballot that the voter voted, the election officer shall retain the ballot envelope, unopened, for the period specified in Section 20A-4-202 unless ordered by a court to produce or count it.

(c) If the election officer determines that the person is a registered voter and is legally entitled to vote the ballot that the voter voted, the election officer shall remove the ballot from the provisional ballot envelope and place the ballot with the absentee ballots to be counted with those ballots at the canvass.

(d) The election officer may not count, or allow to be counted a provisional ballot unless the voter's identity and residence is established by a preponderance of the evidence.

(3) If the election officer determines that the person is a registered voter, the election officer shall ensure that the voter registration records are updated to reflect the information provided on the provisional ballot envelope.

(4) If the election officer determines that the person is not a registered voter and the information on the provisional ballot envelope is complete, the election officer shall:

(a) consider the provisional ballot envelope a voter registration form; and

(b) register the voter.

Section 6. Section 20A-5-101 is amended to read:

20A-5-101. Notice of election.

(1) On or before February 1 in each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the regular general election;

(b) identifies the dates for filing a declaration of candidacy for those offices; and

(c) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than February 15, each county clerk shall:

(i) publish a notice:

(A) once in a newspaper published in that county; and

(B) as required in Section 45-1-101; or

(ii) (A) cause a copy of the notice to be posted in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county; and

(B) prepare an affidavit of that posting, showing a copy of the notice and the places where the notice was posted.

(b) The notice required by Subsection (2)(a) shall:

(i) designate the offices to be voted on in that election in that county, other than local district offices; and

(ii) identify the dates for filing a declaration of candidacy for those offices.

(3) Before each election, the election officer shall give written or printed notice of:

(a) the date and place of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct; [~~and~~]

(d) an election day voting center designated under Section 20A-3-703; and

[~~(d)~~] (e) the qualifications for persons to vote in the election.

(4) To provide the notice required by Subsection (3), the election officer shall publish the notice at least two days before the election:

(a) in a newspaper of general circulation common to the area or in which the election is being held; and

(b) as required in Section 45-1-101.

Section 7. Section 20A-7-801 is amended to read:

20A-7-801. Statewide Electronic Voter Information Website Program -- Duties of the lieutenant governor -- Content -- Duties of local election officials -- Deadlines -- Frequently asked voter questions -- Other elections.

(1) There is established the Statewide Electronic Voter Information Website Program administered by the lieutenant governor in cooperation with the county clerks for general elections and municipal authorities for municipal elections.

(2) In accordance with this section, and as resources become available, the lieutenant governor, in cooperation with county clerks, shall develop, establish, and maintain a state-provided Internet website designed to help inform the voters of the state of:

(a) the offices and candidates up for election; and

(b) the content, effect, operation, fiscal impact, and supporting and opposing arguments of ballot propositions submitted to the voters.

(3) Except as provided under Subsection (6), the website shall include:

(a) all information currently provided in the Utah voter information pamphlet under Title 20A,

Chapter 7, Part 7, Voter Information Pamphlet, including a section prepared, analyzed, and submitted by the Judicial Council describing the judicial selection and retention process;

(b) all information submitted by election officers under Subsection (4) on local office races, local office candidates, and local ballot propositions; [~~and~~]

(c) a list that contains the name of a political subdivision that operates an election day voting center under Section 20A-3-703 and the location of the election day voting center; and

[~~(c)~~] (d) other information determined appropriate by the lieutenant governor that is currently being provided by law, rule, or ordinance in relation to candidates and ballot questions.

(4) (a) An election official shall submit the following information for each ballot label under the election official's direct responsibility under this title:

(i) a list of all candidates for each office;

(ii) if submitted by the candidate to the election official's office on or before August 20 at 5 p.m.:

(A) a statement of qualifications, not exceeding 200 words in length, for each candidate;

(B) the following biographical information if desired by the candidate, current:

(I) age;

(II) occupation;

(III) city of residence;

(IV) years of residence in current city; and

(V) email address; and

(C) a single web address where voters may access more information about the candidate and the candidate's views; and

(iii) factual information pertaining to all ballot propositions submitted to the voters, including:

(A) a copy of the number and ballot title of each ballot proposition;

(B) the final vote cast for each ballot proposition, if any, by a legislative body if the vote was required to place the ballot proposition on the ballot;

(C) a complete copy of the text of each ballot proposition, with all new language underlined and all deleted language placed within brackets; and

(D) other factual information determined helpful by the election official.

(b) The information under Subsection (4)(a) shall be submitted to the lieutenant governor no later than one business day after the deadline under Subsection (4)(a) for each general election year and each municipal election year.

(c) The lieutenant governor shall:

(i) review the information submitted under this section prior to placing it on the website to determine compliance under this section;

(ii) refuse to post information submitted under this section on the website if it is not in compliance with the provisions of this section; and

(iii) organize, format, and arrange the information submitted under this section for the website.

(d) The lieutenant governor may refuse to include information the lieutenant governor determines is not in keeping with:

(i) Utah voter needs;

(ii) public decency; or

(iii) the purposes, organization, or uniformity of the website.

(e) A refusal under Subsection (4)(d) is subject to appeal in accordance with Subsection (5).

(5) (a) A person whose information is refused under Subsection (4), and who is aggrieved by the determination, may appeal by submitting a written notice of appeal to the lieutenant governor within 10 business days after the date of the determination. A notice of appeal submitted under this Subsection (5)(a) shall contain:

(i) a listing of each objection to the lieutenant governor's determination; and

(ii) the basis for each objection.

(b) The lieutenant governor shall review the notice of appeal and shall issue a written response within 10 business days after the notice of appeal is submitted.

(c) An appeal of the response of the lieutenant governor shall be made to the district court, which shall review the matter de novo.

(6) (a) The lieutenant governor shall ensure that each voter will be able to conveniently enter the voter's address information on the website to retrieve information on which offices, candidates, and ballot propositions will be on the voter's ballot at the next general election or municipal election.

(b) The information on the website will anticipate and answer frequent voter questions including the following:

(i) what offices are up in the current year for which the voter may cast a vote;

(ii) who is running for what office and who is the incumbent, if any;

(iii) what address each candidate may be reached at and how the candidate may be contacted;

(iv) for partisan races only, what, if any, is each candidate's party affiliation;

(v) what qualifications have been submitted by each candidate;

(vi) where additional information on each candidate may be obtained;

(vii) what ballot propositions will be on the ballot; and

(viii) what judges are up for retention election.

(7) By not later than March 1, 2008, the lieutenant governor shall have the Statewide Electronic Voter Information Website Program ready for use in the next election in accordance with this section.

(8) As resources are made available and in cooperation with the county clerks, the lieutenant governor may expand the electronic voter information website program to include the same information as provided under this section for special elections and primary elections.

Section 8. Section 63I-2-220 is amended to read:

63I-2-220. Repeal dates, Title 20A.

(1) Section 20A-2-107.5 is repealed July 1, 2013.

(2) Section 20A-3-704 is repealed January 1, 2016.

Section 9. Coordinating H.B. 130 with H.B. 33 -- Merging technical and substantive amendments.

If this H.B. 130 and H.B. 33, Election Law Revisions, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication merge the changes from both bills to modify Subsection 20A-4-107(1)(a)(ii) to read:

"(ii) votes the ballot for the voting precinct in which the person resides; and".

CHAPTER 292
H. B. 143
Passed March 7, 2011
Approved March 25, 2011
Effective May 10, 2011

BALLOT PLACEMENT AMENDMENTS

Chief Sponsor: Steve Eliason
Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Election Code by amending provisions regarding the order in which candidates' names appear on the ballot.

Highlighted Provisions:

This bill:

- requires an election officer to list candidates on the ballot for each office in an order provided in the master ballot position list established by the lieutenant governor through random selection;
- adds an item to the lieutenant governor's notice of election in a general election year to identify the order for listing candidates on the ballot for the current year and the next year;
- exempts the ballot order requirement for races with an unopposed candidate; and
- make technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-306, as last amended by Laws of Utah 2010, Chapter 197
17D-3-309, as enacted by Laws of Utah 2008, Chapter 360
20A-5-101, as last amended by Laws of Utah 2009, Chapter 388
20A-6-301, as last amended by Laws of Utah 2009, Chapter 202
20A-6-302, as last amended by Laws of Utah 2006, Chapter 326
20A-6-303, as last amended by Laws of Utah 2009, Chapter 202
20A-6-304, as last amended by Laws of Utah 2008, Chapters 225 and 315
20A-6-401, as last amended by Laws of Utah 2009, Chapter 202
20A-6-401.1, as last amended by Laws of Utah 2009, Chapter 202
20A-6-402, as last amended by Laws of Utah 2009, Chapter 202
20A-9-403, as last amended by Laws of Utah 2008, Chapter 225
20A-14-105, as last amended by Laws of Utah 2003, Chapter 315

ENACTS:

20A-6-305, Utah Code Annotated 1953

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

Section 1. Section 17B-1-306 is amended to read:

17B-1-306. Local district board -- Election procedures.

(1) Except as provided in Subsection (11), each elected board member shall be selected as provided in this section.

(2) (a) Each election of a local district board member shall be held:

(i) at the same time as the municipal general election; and

(ii) at polling places designated by the county clerk in consultation with the local district for each county in which the local district is located, which polling places shall coincide with municipal general election polling places whenever feasible.

(b) (i) Subject to Subsections (4)(f) and (g), the number of polling places under Subsection (2)(a)(ii) in an election of board members of an irrigation district shall be one polling place per division of the district, designated by the district board.

(ii) Each polling place designated by an irrigation district board under Subsection (2)(b)(i) shall coincide with a polling place designated by the county clerk under Subsection (2)(a)(ii).

(3) (a) The clerk of each local district with a board member position to be filled at the next municipal general election shall provide notice of:

(i) each elective position of the local district to be filled at the next municipal general election;

(ii) the constitutional and statutory qualifications for each position; and

(iii) the dates and times for filing a declaration of candidacy.

(b) The notice required under Subsection (3)(a) shall be:

(i) posted in at least five public places within the local district at least 10 days before the first day for filing a declaration of candidacy; or

(ii) (A) published in a newspaper of general circulation within the local district at least three but no more than 10 days before the first day for filing a declaration of candidacy; and

(B) published, in accordance with Section 45-1-101, for 10 days before the first day for filing a declaration of candidacy.

(4) (a) To become a candidate for an elective local district board position, the prospective candidate shall file a declaration of candidacy in person with the local district, during office hours and not later than the close of normal office hours between July 1 and July 15 of any odd-numbered year.

(b) When July 15 is a Saturday, Sunday, or holiday, the filing time shall be extended until the close of normal office hours on the following regular business day.

(c) (i) Before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether or not the candidate meets those requirements.

(ii) If the prospective candidate does not meet the qualification requirements for the office, the filing officer may not accept the declaration of candidacy.

(iii) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall accept the declaration of candidacy.

(d) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) _____, being first duly sworn, say that I reside at (Street) _____, City of _____, County of _____, State of Utah, (Zip Code) _____, (Telephone Number, if any)_____; that I meet the qualifications for the office of board of trustees member for _____ (state the name of the local district); that I am a candidate for that office to be voted upon at the next election, and I hereby request that my name be printed upon the official ballot for that election.

(Signed)

_____

Subscribed and sworn to (or affirmed) before me by _____ on this _____ day of _____, ____.

(Signed) _____

(Clerk or Notary Public)"

(e) Each person wishing to become a valid write-in candidate for an elective local district board position is governed by Section 20A-9-601.

(f) If at least one person does not file a declaration of candidacy as required by this section, a person shall be appointed to fill that board position by following the procedures and requirements for appointment established in Section 20A-1-512.

(g) If only one candidate files a declaration of candidacy and there is no write-in candidate who complies with Section 20A-9-601, the board need not hold an election for that position and may appoint the candidate to the board.

(5) (a) A primary election may be held if:

(i) the election is authorized by the local district board; and

(ii) the number of candidates for a particular local board position or office exceeds twice the number of persons needed to fill that position or office.

(b) The primary election shall be conducted:

(i) on the same date as the municipal primary election, as provided for in Section 20A-1-201.5; and

(ii) according to the procedures for municipal primary elections provided under Title 20A, Election Code.

(6) (a) Except as provided in Subsection (6)(c), the local district clerk shall certify the candidate names to the clerk of each county in which the local district is located no later than August 20 of the municipal election year.

(b) (i) Except as provided in Subsection (6)(c)[~~,~~] and in accordance with Section 20A-6-305, the clerk of each county in which the local district is located shall coordinate the placement of the name of each candidate for local district office in the nonpartisan section of the municipal general election ballot with the municipal election clerk.

(ii) If consolidation of the local district election ballot with the municipal general election ballot is not feasible, the county clerk shall provide for a separate local district election ballot to be administered by poll workers at polling locations designated under Subsection (2).

(c) (i) Subsections (6)(a) and (b) do not apply to an election of a member of the board of an irrigation district established under Chapter 2a, Part 5, Irrigation District Act.

(ii) (A) Subject to Subsection (6)(c)(ii)(B), the board of each irrigation district shall prescribe the form of the ballot for each board member election.

(B) Each ballot for an election of an irrigation district board member shall be in a nonpartisan format.

(C) The name of each candidate shall be placed on the ballot in the order specified under Section 20A-6-305.

(7) (a) Each voter at an election for a board of trustees member of a local district shall:

(i) be a registered voter within the district, except for an election of:

(A) an irrigation district board of trustees member; or

(B) a basic local district board of trustees member who is elected by property owners; and

(ii) meet the requirements to vote established by the district.

(b) Each voter may vote for as many candidates as there are offices to be filled.

(c) The candidates who receive the highest number of votes are elected.

(8) Except as otherwise provided by this section, the election of local district board members is governed by Title 20A, Election Code.

(9) (a) A person elected to serve on a local district board shall serve a four-year term, beginning at noon on the January 1 after the person's election.

(b) A person elected shall be sworn in as soon as practical after January 1.

(10) (a) Except as provided in Subsection (10)(b), each local district shall reimburse the county or

municipality holding an election under this section for the costs of the election attributable to that local district.

(b) Each irrigation district shall bear its own costs of each election it holds under this section.

(11) This section does not apply to an improvement district that provides electric or gas service.

(12) The provisions of Title 20A, Chapter 3, Part 6, Early Voting, do not apply to an election under this section.

Section 2. Section 17D-3-309 is amended to read:

17D-3-309. Election of board of supervisors members -- Ballots -- Commission duties regarding elections -- Election expenses.

(1) The commission and department shall conduct by mail each election of members of the board of supervisors of a conservation district.

(2) (a) No later than five days before the date set for the election of board of supervisors members, the commission shall mail a ballot to each person listed on the supervisor's election mailing list under Section 17D-3-307.

(b) Each ballot shall:

(i) contain:

(A) the names of all nominees for board of supervisors members, listed in [~~alphabetical order according to last name~~] the order specified under Section 20A-6-305;

(B) a place for the voter to indicate the person or persons for whom the voter is voting; and

(C) instructions to the voter on how to mark the ballot to indicate the voter's vote; and

(ii) specify the date after which the ballot will not be accepted for purposes of the election.

(3) The candidates equal in number to the number of board of supervisors positions available and receiving the highest number of votes are elected as members of the board of supervisors and take office on the date set by the commission for their terms to begin.

(4) The commission shall:

(a) determine all questions of voter eligibility;

(b) certify the count and tally of ballots and votes cast; and

(c) declare and certify each board of supervisors member elected.

(5) The department shall pay all expenses incident to an election of board of supervisors members.

Section 3. Section 20A-5-101 is amended to read:

20A-5-101. Notice of election.

(1) On or before February 1 in each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the regular general election;

(b) identifies the dates for filing a declaration of candidacy for those offices; [~~and~~]

(c) includes the master ballot position list for the current year and the next year as established under Section 20A-6-305; and

[~~(c)~~] (d) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than February 15, each county clerk shall:

(i) publish a notice:

(A) once in a newspaper published in that county; and

(B) as required in Section 45-1-101; or

(ii) (A) cause a copy of the notice to be posted in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county; and

(B) prepare an affidavit of that posting, showing a copy of the notice and the places where the notice was posted.

(b) The notice required by Subsection (2)(a) shall:

(i) designate the offices to be voted on in that election in that county, other than local district offices; and

(ii) identify the dates for filing a declaration of candidacy for those offices.

(3) Before each election, the election officer shall give written or printed notice of:

(a) the date and place of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct; and

(d) the qualifications for persons to vote in the election.

(4) To provide the notice required by Subsection (3), the election officer shall publish the notice at least two days before the election:

(a) in a newspaper of general circulation common to the area or in which the election is being held; and

(b) as required in Section 45-1-101.

Section 4. Section 20A-6-301 is amended to read:

20A-6-301. Paper ballots -- Regular general election.

(1) Each election officer shall ensure that:

(a) all paper ballots furnished for use at the regular general election contain no captions or

other endorsements except as provided in this section;

(b) (i) the paper ballot contains a ballot stub at least one inch wide, placed across the top of the ballot, and divided from the rest of ballot by a perforated line;

(ii) the ballot number and the words "Poll Worker's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(c) immediately below the perforated ballot stub, the following endorsements are printed in 18 point bold type:

(i) "Official Ballot for ____ County, Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the county clerk and the words "county clerk";

(d) each ticket is placed in a separate column on the ballot in the order [~~determined by the election officer~~] specified under Section 20A-6-305 with the party emblem, followed by the party name, at the head of the column;

(e) the party name or title is printed in capital letters not less than [~~1/4~~] one-fourth of an inch high;

(f) a circle [~~1/2~~] one-half inch in diameter is printed immediately below the party name or title, and the top of the circle is placed not less than two inches below the perforated line;

(g) unaffiliated candidates and candidates not affiliated with a registered political party are listed in one column in the order specified under Section 20A-6-305, without a party circle, with the following instructions printed at the head of the column: "All candidates not affiliated with a political party are listed below. They are to be considered with all offices and candidates listed to the left. Only one vote is allowed for each office.";

(h) the columns containing the lists of candidates, including the party name and device, are separated by heavy parallel lines;

(i) the offices to be filled are plainly printed immediately above the names of the candidates for those offices;

(j) the names of candidates are printed in capital letters, not less than [~~1/8~~] one-eighth nor more than [~~1/4~~] one-fourth of an inch high in heavy-faced type not smaller than 10 point, between lines or rules [~~3/8~~] three-eighths of an inch apart;

(k) a square with sides measuring not less than [~~1/4~~] one-fourth of an inch in length is printed immediately adjacent to the name of each candidate;

(l) for the offices of president and vice president and governor and lieutenant governor, one square with sides measuring not less than [~~1/4~~] one-fourth of an inch in length is printed on the same side as but opposite a double bracket enclosing the names of the two candidates;

(m) immediately adjacent to the unaffiliated ticket on the ballot, the ballot contains a write-in column long enough to contain as many written names of candidates as there are persons to be elected with:

(i) for each office on the ballot, the office to be filled plainly printed immediately above:

(A) a blank, horizontal line to enable the entry of a valid write-in candidate and a square with sides measuring not less than [~~1/4~~] one-fourth of an inch in length printed immediately adjacent to the blank horizontal line; or

(B) for the offices of president and vice president and governor and lieutenant governor, two blank horizontal lines, one placed above the other, to enable the entry of two valid write-in candidates, and one square with sides measuring not less than [~~1/4~~] one-fourth of an inch in length printed on the same side as but opposite a double bracket enclosing the two blank horizontal lines; and

(ii) the words "Write-In Voting Column" printed at the head of the column without a [~~1/2~~] one-half inch circle;

(n) when required, the ballot includes a nonpartisan ticket placed immediately adjacent to the write-in ticket with the word "NONPARTISAN" in reverse type in an 18 point solid rule running vertically the full length of the nonpartisan ballot copy; and

(o) constitutional amendments or other questions submitted to the vote of the people, are printed on the ballot after the list of candidates.

(2) Each election officer shall ensure that:

(a) each person nominated by any political party or group of petitioners is placed on the ballot:

(i) under the party name and emblem, if any; or

(ii) under the title of the party or group as designated by them in their certificates of nomination or petition, or, if none is designated, then under some suitable title;

(b) the names of all unaffiliated candidates that qualify as required in Title 20A, Chapter 9, Part 5, Candidates not Affiliated with a Party, are placed on the ballot;

(c) the names of the candidates for president and vice president are used on the ballot instead of the names of the presidential electors; and

(d) the ballots contain no other names.

(3) When the ballot contains a nonpartisan section, the election officer shall ensure that:

(a) the designation of the office to be filled in the election and the number of candidates to be elected are printed in type not smaller than eight point;

(b) the words designating the office are printed flush with the left-hand margin;

(c) the words, "Vote for one" or "Vote for two or more" extend to the extreme right of the column;

(d) the nonpartisan candidates are grouped according to the office for which they are candidates;

(e) the names in each group are placed in [~~alphabetical order~~] the order specified under Section 20A-6-305 with the surnames last[~~, except for candidates for the State Board of Education and local school boards~~]; and

[~~(f) the names of candidates for the State Board of Education are placed on the ballot as certified by the lieutenant governor under Section 20A-14-105;~~]

[~~(g) if candidates for membership on a local board of education were selected in a primary election, the name of the candidate who received the most votes in the primary election is listed first on the ballot;~~]

[~~(h) if candidates for membership on a local board of education were not selected in the primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk; and~~]

[~~(i)~~] (f) each group is preceded by the designation of the office for which the candidates seek election, and the words, "Vote for one" or "Vote for two or more," according to the number to be elected.

(4) Each election officer shall ensure that:

(a) proposed amendments to the Utah Constitution are listed on the ballot in accordance with Section 20A-6-107;

(b) ballot propositions submitted to the voters are listed on the ballot in accordance with Section 20A-6-107; and

(c) bond propositions that have qualified for the ballot are listed on the ballot under the title assigned to each bond proposition under Section 11-14-206.

Section 5. Section 20A-6-302 is amended to read:

20A-6-302. Paper ballots -- Placement of candidates' names.

(1) Each election officer shall ensure, for paper ballots in regular general elections, that:

[~~(a) except for candidates for state school board and local school boards:~~]

[~~(i)~~] (a) each candidate is listed by party; [~~and~~]

[~~(ii)~~] (b) candidates' surnames are listed in alphabetical order on the ballots when two or more candidates' names are required to be listed on a ticket under the title of an office; and

[~~(b)~~] (c) the names of candidates [~~for the State Board of Education~~] are placed on the ballot [~~as certified by the lieutenant governor under Section 20A-14-105;~~] in the order specified under Section 20A-6-305.

[~~(c) if candidates for membership on a local board of education were selected in a regular primary election, the name of the candidate who received the most votes in the regular primary election is listed first on the ballot; and~~]

[~~(d) if candidates for membership on a local board of education were not selected in the regular primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk.~~]

(2) (a) The election officer may not allow the name of a candidate who dies or withdraws before election day to be printed upon the ballots.

(b) If the ballots have already been printed, the election officer:

(i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a line through the candidate's name before the ballots are delivered to voters; and

(ii) may not count any votes for that dead or withdrawn candidate.

(3) (a) When there is only one candidate for county attorney at the regular general election in counties that have three or fewer registered voters of the county who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of county attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of county attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for county attorney is printed on the ballot under authority of this Subsection (3), the county clerk may not count any write-in votes received for the office of county attorney.

(e) If no qualified person files for the office of county attorney or if the candidate is not elected by the voters, the county legislative body shall appoint the county attorney as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (3)(f), be placed on the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (3)(a) shall not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (3)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

(4) (a) When there is only one candidate for district attorney at the regular general election in a

prosecution district that has three or fewer registered voters of the district who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of district attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of district attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for district attorney is printed on the ballot under authority of this Subsection (4), the county clerk may not count any write-in votes received for the office of district attorney.

(e) If no qualified person files for the office of district attorney, or if the only candidate is not elected by the voters under this subsection, the county legislative body shall appoint a new district attorney for a four-year term as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (4)(f), be placed on the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (4)(a) shall not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (4)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

Section 6. Section 20A-6-303 is amended to read:

20A-6-303. Regular general election -- Ballot sheets.

(1) Each election officer shall ensure that:

(a) copy on the ballot sheets or ballot labels, as applicable, are arranged in approximately the same order as paper ballots;

(b) the titles of offices and the names of candidates are printed in vertical columns or in a series of separate pages;

(c) the ballot sheet or any pages used for the ballot label are of sufficient number to include, after the list of candidates:

(i) the names of candidates for judicial offices and any other nonpartisan offices; and

(ii) any ballot propositions submitted to the voters for their approval or rejection;

(d) (i) a voting square or position is included where the voter may record a straight party ticket vote for all the candidates of one party by one mark or punch; and

(ii) the name of each political party listed in the straight party selection area includes the word "party" at the end of the party's name;

(e) the tickets are printed in the order [~~determined by the county clerk~~] specified under Section 20A-6-305;

(f) the office titles are printed immediately adjacent to the names of candidates so as to indicate clearly the candidates for each office and the number to be elected;

(g) the party designation of each candidate is printed immediately adjacent to the candidate's name; and

(h) (i) if possible, all candidates for one office are grouped in one column or upon one page;

(ii) if all candidates for one office cannot be listed in one column or grouped on one page:

(A) the ballot sheet or ballot label shall be clearly marked to indicate that the list of candidates is continued on the following column or page; and

(B) approximately the same number of names shall be printed in each column or on each page.

(2) Each election officer shall ensure that:

(a) proposed amendments to the Utah Constitution are listed in accordance with Section 20A-6-107;

(b) ballot propositions submitted to the voters are listed in accordance with Section 20A-6-107; and

(c) bond propositions that have qualified for the ballot are listed under the title assigned to each bond proposition under Section 11-14-206.

Section 7. Section 20A-6-304 is amended to read:

20A-6-304. Regular general election -- Electronic ballots.

(1) Each election officer shall ensure that:

(a) the format and content of the electronic ballot is arranged in approximately the same order as paper ballots;

(b) the titles of offices and the names of candidates are displayed in vertical columns or in a series of separate display screens;

(c) the electronic ballot is of sufficient length to include, after the list of candidates:

(i) the names of candidates for judicial offices and any other nonpartisan offices; and

(ii) any ballot propositions submitted to the voters for their approval or rejection;

(d) (i) a voting square or position is included where the voter may record a straight party ticket vote for all the candidates of one party by making a single selection; and

(ii) the name of each political party listed in the straight party selection area includes the word "party" at the end of the party's name;

(e) the tickets are displayed in the order [~~determined by the county clerk~~] specified under Section 20A-6-305;

(f) the office titles are displayed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected;

(g) the party designation of each candidate is displayed adjacent to the candidate's name; and

(h) if possible, all candidates for one office are grouped in one column or upon one display screen.

(2) Each election officer shall ensure that:

(a) proposed amendments to the Utah Constitution are displayed in accordance with Section 20A-6-107;

(b) ballot propositions submitted to the voters are displayed in accordance with Section 20A-6-107; and

(c) bond propositions that have qualified for the ballot are displayed under the title assigned to each bond proposition under Section 11-14-206.

Section 8. Section 20A-6-305 is enacted to read:

20A-6-305. Master ballot position list -- Random selection -- Procedures -- Publication -- Surname -- Exemptions.

(1) As used in this section, "master ballot position list" means an official list of the 26 characters in the alphabet listed in random order and numbered from one to 26 as provided under Subsection (2).

(2) The lieutenant governor shall:

(a) at the beginning of each general election year conduct a random selection to establish the master ballot position list for the current year and the next year in accordance with procedures established under Subsection (2)(c);

(b) publish the master ballot position lists on the lieutenant governor's election website on or before February 1 in each regular general election year; and

(c) establish written procedures for:

(i) the election official to use the master ballot position list; and

(ii) the lieutenant governor in:

(A) conducting the random selection in a fair manner; and

(B) providing a record of the random selection process used.

(3) In accordance with the written procedures established under Subsection (2)(c)(i), an election officer shall use the master ballot position list for the current year to determine the order in which to list candidates on the ballot for an election held during the year.

(4) To determine the order in which to list candidates on the ballot required under Subsection (3), the election officer shall apply the randomized alphabet using:

(a) the candidate's surname;

(b) for candidates with a surname that has the same spelling, the candidate's given name;

(c) the surname of the president and the surname of the governor for an election for the offices of president and vice president and governor and lieutenant governor; and

(d) if the ballot provides for a ticket or a straight party ticket, the registered political party name.

(5) This section does not apply to:

(a) an election for an office for which only one candidate is listed on the ballot; or

(b) a judicial retention election under Section 20A-12-201.

Section 9. Section 20A-6-401 is amended to read:

20A-6-401. Ballots for municipal primary elections.

(1) Each election officer shall ensure that:

(a) (i) the ballot contains a perforated ballot stub at least one inch wide, placed across the top of the ballot;

(ii) the ballot number and the words "Poll Worker's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(b) immediately below the perforated ballot stub, the following endorsements are printed in 18 point bold type:

(i) "Official Primary Ballot for ____ (City or Town), Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer and the election officer's title in eight point type;

(c) immediately below the election officer's title, two one-point parallel horizontal rules separate endorsements from the rest of the ballot;

(d) immediately below the horizontal rules, an "Instructions to Voters" section is printed in 10 point bold type that states: "To vote for a candidate, place a cross (X) in the square following the name(s) of the person(s) you favor as the candidate(s) for each respective office." followed by two one-point parallel rules;

(e) after the rules, the designation of the office for which the candidates seek nomination is printed

flush with the left-hand margin and the words: "Vote for one" or "Vote for two or more" are printed to extend to the extreme right of the column in 10 point bold type, followed by a hair-line rule;

(f) after the hair-line rule, the names of the candidates are printed in heavy face type between lines or rules [~~3/8~~] three-eighths inch apart, [~~alphabetically according to surnames~~] in the order specified under Section 20A-6-305 with surnames last and grouped according to the office that they seek;

(g) a square with sides not less than [~~1/4~~] one-fourth inch long is printed immediately adjacent to the names of the candidates; and

(h) the candidate groups are separated from each other by one light and one heavy line or rule.

(2) A municipal primary ballot may not contain any space for write-in votes.

Section 10. Section 20A-6-401.1 is amended to read:

20A-6-401.1. Ballots for partisan municipal primary elections.

(1) If a municipality is using paper ballots, each election officer shall ensure that:

(a) all paper ballots furnished for use at the regular primary election:

(i) are perforated to separate the candidates of one political party from those of the other political parties so that the voter may separate the part of the ballot containing the names of the political party of the voter's choice from the rest of the ballot;

(ii) have sides that are perforated so that the outside sections of the ballot, when detached, are similar in appearance to the inside sections of the ballot when detached; and

(iii) contain no captions or other endorsements except as provided in this section;

(b) the names of all candidates from each party are listed on the same ballot in one or more columns under their party name and emblem;

(c) the political parties are printed on the ballot in the order [~~determined by the county clerk~~] specified under Section 20A-6-305;

(d) (i) the ballot contains a ballot stub that is at least one inch wide, placed across the top of the ballot;

(ii) the ballot number and the words "Poll Worker's Initials ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(e) immediately below the perforated ballot stub, the following endorsements are printed in 18 point bold type:

(i) "Official Primary Ballot for ____ County, Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the county clerk and the words "county clerk";

(f) after the facsimile signature, the political party emblem and the name of the political party are printed;

(g) after the party name and emblem, the ballot contains the following printed in not smaller than 10 point bold face, double leaded type: "Instructions to Voters: To vote for a candidate, place a cross (X) in the square immediately adjacent to the name of the person for whom you wish to vote and in no other place. Do not vote for any candidate listed under more than one party or group designation.", followed by two one-point parallel horizontal rules;

(h) after the rules, the designation of the office for which the candidates seek nomination is printed flush with the left-hand margin and the words: "Vote for one" or "Vote for two or more" are printed to extend to the extreme right of the column in 10 point bold type, followed by a hair-line rule;

(i) after the hair-line rule, the names of the candidates are printed in heavy face type between lines or rules [~~3/8~~] three-eighths inch apart, [~~alphabetically according to surnames~~] in the order specified under Section 20A-6-305 with surnames last and grouped according to the office that they seek;

(j) a square with sides not less than [~~1/4~~] one-fourth inch long is printed immediately adjacent to the names of the candidates;

(k) the candidate groups are separated from each other by one light and one heavy line or rule; and

(l) the nonpartisan candidates are listed as follows:

(i) immediately below the listing of the party candidates, the word "NONPARTISAN" is printed in reverse type in an 18 point solid rule that extends the full width of the type copy of the party listing above; and

(ii) below "NONPARTISAN," the office, the number of candidates to vote for, the candidate's name, the voting square, and any other necessary information is printed in the same style and manner as for party candidates.

(2) (a) If a municipality is using ballot sheets or electronic ballots, the election officer may require that:

(i) the ballot, or ballot label in the case of a punch card ballot, for a regular primary election consist of several groups of pages or display screens, so that a separate group can be used to list the names of candidates seeking nomination of each qualified political party, with additional groups used to list candidates for other nonpartisan offices;

(ii) the separate groups of pages or display screens are identified by color or other suitable means; and

(iii) the ballot or ballot label contain instructions that direct the voter how to vote the ballot.

(b) If a municipality is using ballot sheets or electronic ballots, each election officer shall:

(i) for municipalities using punch card ballots, ensure that the ballot label provides a means for the voter to designate the political party in whose primary the voter is voting; and

(ii) determine the order for printing the names of the political parties on the ballot label in accordance with Section 20A-6-305.

Section 11. Section 20A-6-402 is amended to read:

20A-6-402. Ballots for municipal general elections.

(1) When using a paper ballot at municipal general elections, each election officer shall ensure that:

(a) the names of the two candidates who received the highest number of votes for mayor in the municipal primary are placed upon the ballot;

(b) if no municipal primary election was held, the names of the candidates who filed declarations of candidacy for municipal offices are placed upon the ballot;

(c) for other offices:

(i) twice the number of candidates as there are positions to be filled are certified as eligible for election in the municipal general election from those candidates who received the greater number of votes in the primary election; and

(ii) the names of those candidates are placed upon the municipal general election ballot;

(d) the names of the candidates are placed on the ballot in the order specified under Section 20A-6-305;

[~~(d)~~] (e) a write-in area is placed upon the ballot that contains, for each office:

(i) a blank, horizontal line to enable the entry of a valid write-in candidate; and

(ii) a square or other conforming area that is adjacent to or opposite the blank horizontal line to enable the voter to indicate the voter's vote;

[~~(e)~~] (f) ballot propositions that have qualified for the ballot, including propositions submitted to the voters by the municipality, municipal initiatives, and municipal referenda, are listed on the ballot in accordance with Section 20A-6-107; and

[~~(f)~~] (g) bond propositions that have qualified for the ballot are listed on the ballot under the title assigned to each bond proposition under Section 11-14-206.

(2) When using a punch card ballot at municipal general elections, each election officer shall ensure that:

(a) (i) the ballot contains a perforated ballot stub at least one inch wide, placed across the top of the ballot;

(ii) the ballot number and the words "Poll Worker's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(b) immediately below the perforated ballot stub, the following endorsements are printed in 18 point bold type:

(i) "Official Ballot for ____ (City or Town), Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer and the election officer's title in eight point type;

(c) immediately below the election officer's title, two one-point parallel horizontal rules separate endorsements from the rest of the ballot;

(d) immediately below the horizontal rules, an "Instructions to Voters" section is printed in 10 point bold type that states: "To vote for a candidate, place a cross (X) in the square following the name(s) of the person(s) you favor as the candidate(s) for each respective office." followed by two one-point parallel rules;

(e) after the rules, the designation of the office for which the candidates seek election is printed flush with the left-hand margin and the words: "Vote for one" or "Vote for two or more" are printed to extend to the extreme right of the column in 10 point bold type, followed by a hair-line rule;

(f) after the hair-line rule, the names of the candidates are printed in heavy face type between lines or rules [~~3/8~~] three-eighths inch apart, [~~alphabetically according to surnames~~] in the order specified under Section 20A-6-305 with surnames last and grouped according to the office that they seek;

(g) a square with sides not less than [~~1/4~~] one-fourth inch long is printed immediately adjacent to the names of the candidates;

(h) following the name of the last candidate for each office, the ballot contains:

(i) a write-in space for each elective office where the voter may enter the name of a valid write-in candidate; and

(ii) a square printed immediately adjacent to the write-in space or line where the voter may vote for the valid write-in candidate; and

(i) the candidate groups are separated from each other by one light and one heavy line or rule.

(3) When using a ballot sheet other than a punch card ballot at municipal general elections, each election officer shall ensure that:

(a) (i) the ballot contains a perforated ballot stub placed across the top of the ballot;

(ii) the ballot number and the words "Poll Worker's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(b) immediately below the perforated ballot stub, the following endorsements are printed:

(i) "Official Ballot for ____ (City or Town), Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer and the election officer's title;

(c) immediately below the election officer's title, a distinct border or line separates endorsements from the rest of the ballot;

(d) immediately below the border or line, an "Instructions to Voters" section is printed that states: "To vote for a candidate, select the name(s) of the person(s) you favor as the candidate(s) for each respective office." followed by another border or line;

(e) after the border or line, the designation of the office for which the candidates seek election is printed and the words: "Vote for one" or "Vote for two or more" are printed, followed by a line or border;

(f) after the line or border, the names of the candidates are printed [~~alphabetically according to surnames~~] in the order specified under Section 20A-6-305 with surnames last and grouped according to the office that they seek;

(g) an oval is printed adjacent to the names of the candidates;

(h) following the name of the last candidate for each office, the ballot contains:

(i) a write-in space or blank line for each elective office where the voter may enter the name of a valid write-in candidate; and

(ii) an oval is printed adjacent to the write-in space or line where the voter may vote for the valid write-in candidate; and

(i) the candidate groups are separated from each other by a line or border.

(4) When using an electronic ballot at municipal general elections, each election officer shall ensure that:

(a) the following endorsements are displayed on the first screen of the ballot:

(i) "Official Ballot for ____ (City or Town), Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer and the election officer's title;

(b) immediately below the election officer's title, a distinct border or line separates the endorsements from the rest of the ballot;

(c) immediately below the border or line, an "Instructions to Voters" section is displayed that states: "To vote for a candidate, select the name(s) of the person(s) you favor as the candidate(s) for each respective office." followed by another border or line;

(d) after the border or line, the designation of the office for which the candidates seek election is displayed, and the words: "Vote for one" or "Vote for two or more" are displayed, followed by a line or border;

(e) after the line or border, the names of the candidates are displayed [~~alphabetically according to surnames~~] in the order specified under Section 20A-6-305 with surnames last and grouped according to the office that they seek;

(f) a voting square or position is located adjacent to the name of each candidate;

(g) following the name of the last candidate for each office, the ballot contains a write-in space where the voter may enter the name of and vote for a valid write-in candidate for the office; and

(h) the candidate groups are separated from each other by a line or border.

(5) When a municipality has chosen to nominate candidates by convention or committee, the election officer shall ensure that the party name is included with the candidate's name on the ballot.

Section 12. Section 20A-9-403 is amended to read:

20A-9-403. Regular primary elections.

(1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular primary election day.

(b) Each registered political party that chooses to use the primary election process to nominate some or all of its candidates shall comply with the requirements of this section.

(2) (a) As a condition for using the state's election system, each registered political party that wishes to participate in the primary election shall:

(i) declare their intent to participate in the primary election;

(ii) identify one or more registered political parties whose members may vote for the registered political party's candidates and whether or not persons identified as unaffiliated with a political party may vote for the registered political party's candidates; and

(iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1 of each even-numbered year.

(b) As a condition for using the state's election system, each registered political party that wishes to participate in the primary election shall:

(i) certify the name and office of all of the registered political party's candidates to the lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

(ii) certify the name and office of each of its county candidates to the county clerks by 5 p.m. on May 13 of each even-numbered year.

(c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall send the county clerks a certified list of the names of all statewide or multicounty candidates that must be printed on the primary ballot and the order the candidates are to

appear on the ballot in accordance with Section 20A-6-305.

(d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year.

(ii) A registered political party's candidates for president and vice president of the United States shall be certified to the lieutenant governor as provided in Subsection 20A-9-202(4).

(e) Each political party shall certify the names of its presidential and vice-presidential candidates and presidential electors to the lieutenant governor's office no later than September 8 of each presidential election year.

(3) The county clerk shall:

(a) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(b) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(c) [~~conduct a lottery to~~] determine the order of the candidates' names on the ballot in accordance with Section 20A-6-305.

(4) After the county clerk receives the certified list from a registered political party, the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June ____, _____(year), to nominate party candidates for the parties and nonpartisan offices listed on the primary ballot. The polling place for voting precinct ____ is ____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".

(5) (a) Candidates receiving the highest number of votes cast for each office at the regular primary election are nominated by their party or nonpartisan group for that office.

(b) If two or more candidates are to be elected to the office at the regular general election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the regular primary election are the nominees of their party for those positions.

(6) (a) When a tie vote occurs in any primary election for any national, state, or other office that represents more than one county, the governor, lieutenant governor, and attorney general shall, at a public meeting called by the governor and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the governor determines.

(b) When a tie vote occurs in any primary election for any county office, the district court judges of the district in which the county is located shall, at a public meeting called by the judges and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the judges determine.

(7) The expense of providing all ballots, blanks, or other supplies to be used at any primary election provided for by this section, and all expenses necessarily incurred in the preparation for or the conduct of that primary election shall be paid out of the treasury of the county or state, in the same manner as for the regular general elections.

Section 13. Section 20A-14-105 is amended to read:

20A-14-105. Becoming a candidate for membership on the State Board of Education -- Selection of candidates by the governor -- Ballot placement.

(1) By August 1 of each regular general election year, the governor shall:

(a) for each state board district subject to election in that year, select two candidates for the State Board of Education from the lists submitted by the state board district nominating and recruiting committee; and

(b) certify the names of the two candidates from each school board district to the lieutenant governor.

(2) If the governor fails to select two candidates for a state board district by September 1, the nominating and recruiting committee shall:

(a) select the two candidates; and

(b) notify the lieutenant governor of its selections by September 15.

(3) [~~The~~] In accordance with Section 20A-6-305, the lieutenant governor shall[~~: (a) conduct a lottery to determine the order of the candidates' names on the ballot; and (b)~~] certify the names and order of the names to the county clerks for placement on the nonpartisan section of the ballot.

CHAPTER 293
H. B. 152
Passed March 4, 2011
Approved March 25, 2011
Effective May 10, 2011

SCHOOL COMMUNITY COUNCILS AMENDMENTS

Chief Sponsor: Bill Wright
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions pertaining to the membership, selection, and operation of school community councils.

Highlighted Provisions:

This bill:

- modifies qualifications for a parent or guardian member of a school community council;
- modifies duties of a school community council;
- requires an election for the parent or guardian members of a school community council to:
  - extend for a period of at least three consecutive school days; and
  - commence no later than 30 days after the first day of the school year;
- requires a principal to provide notification of a school community council election at least 21 days before the commencement of an election;
- modifies the officer positions of a school community council;
- requires a school's principal, in order for the school to receive an allotment of School LAND Trust Program money, to provide a signed, written assurance that:
  - the school community council membership is consistent with requirements specified in law; and
  - the selection of school community council members is consistent with requirements specified in law;
- directs the legislative auditor general, at the direction of the Legislative Audit Subcommittee, to audit a sample of schools for compliance with requirements pertaining to school community council membership and the selection of school community council members;
- provides for a reduction or an elimination of a school's allocation of School LAND Trust Program money for failure to comply with requirements pertaining to school community council membership or the selection of school community council members; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 142, Public Official Contact Information, and H.B. 186, Utah Code Technical Amendments, by providing superseding technical amendments.

Utah Code Sections Affected:

AMENDS:

53A-1a-108, as last amended by Laws of Utah 2008, Chapters 157, 178, and 332

53A-16-101.5, as last amended by Laws of Utah 2008, Chapters 332 and 382

Utah Code Sections Affected by Coordination Clause:

53A-1a-108, as last amended by Laws of Utah 2008, Chapters 157, 178, and 332

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

Section 1. Section 53A-1a-108 is amended to read:

53A-1a-108. School community councils authorized -- Duties -- Composition -- Election procedures and selection of members.

(1) As used in this section:

(a) "Educator" has the meaning defined in Section 53A-6-103.

[~~(a)~~] (b) (i) "Parent or guardian member" means a member of a school community council who is a parent or guardian of a student who:

(A) is attending the school [~~or who~~];

(B) will be enrolled at the school at any time during the parent's or guardian's initial term of office[~~.~~]; or

(C) was enrolled at the school during the parent or guardian member's initial term of office as provided in Subsection (5)(g)(iii).

(ii) "Parent or guardian member" may not include [~~a person~~] an educator who [~~meets the definition of a school employee member~~] is employed by the school district in which the school is located unless the [~~person's~~] educator's employment [~~at the school~~] does not exceed an average of six hours per week.

[~~(b)~~] (c) "School employee member" means a member of a school community council who is a person employed at a school by the school or school district, including the principal.

(2) Each public school, in consultation with its local school board, shall establish a school community council at the school building level.

(3) (a) Each school community council shall:

(i) [~~develop~~] create a school improvement plan in accordance with Section 53A-1a-108.5;

(ii) [~~develop~~] create the School LAND Trust Program in accordance with Section 53A-16-101.5;

(iii) assist in the [~~development~~] creation and implementation of a staff professional development plan as provided by Section 53A-3-701; and

[~~(iv) develop a child access routing plan in accordance with Section 53A-3-402; and~~]

[~~(v)~~] (iv) advise and make recommendations to school and school district administrators and the local school board regarding the school and its

programs, school district programs, a child access routing plan in accordance with Section 53A-3-402, and other issues relating to the community environment for students.

(b) In addition to the duties specified in Subsection (3)(a), a school community council for an elementary school shall [~~develop~~] create a reading achievement plan in accordance with Section 53A-1-606.5.

(c) A school or school district administrator may not prohibit or discourage a school community council from discussing issues, or offering advice or recommendations, regarding the school and its programs, school district programs, the curriculum, or the community environment for students.

(4) (a) Each school community council shall consist of school employee members and parent or guardian members in accordance with this section.

(b) Except as provided in Subsection (4)(c):

(i) each school community council for a high school shall have six parent or guardian members and five school employee members, including the principal; and

(ii) each school community council for a school other than a high school shall have four parent or guardian members and three school employee members, including the principal.

(c) (i) A school community council may have a larger membership provided that the number of parent or guardian members exceeds the number of school employee members.

(ii) A school community council may have a smaller membership provided that:

(A) the number of parent or guardian members exceeds the number of school employee members; and

(B) there are at least two school employee members on the school community council.

(5) (a) Each school employee member, except the principal, shall be elected by secret ballot by a majority vote of the school employees and serve a two-year term. The principal shall serve as an ex officio member with full voting privileges.

(b) (i) Each parent or guardian member shall be elected by secret ballot at an election held at the school by a majority vote of those voting at the election and serve a two-year term.

(ii) Only parents or guardians of students attending the school may vote at the election under Subsection (5)(b)(i).

(iii) Any parent or guardian of a student who meets the qualifications of this section may file or declare himself as a candidate for election to a school community council.

(iv) An election for the parent or guardian members of a school community council shall:

(A) extend for a period of at least three consecutive school days; and

(B) commence no later than 30 days after the first day of the school year.

(c) (i) The principal of the school, or the principal's designee, shall provide notice of the available community council positions to school employees, parents, and guardians at least [~~14~~] 21 days before the date that voting commences for the elections held under Subsections (5)(a) and (5)(b).

(ii) The notice shall include:

(A) the dates and times of the elections;

(B) a list of council positions that are up for election; and

(C) instructions for becoming a candidate for a community council position.

(iii) The principal of the school, or the principal's designee, shall oversee the elections held under Subsections (5)(a) and (5)(b).

(iv) Ballots cast in an election held under Subsection (5)(b) shall be deposited in a secure ballot box[~~;~~].

(d) Results of the elections held under Subsections (5)(a) and (5)(b) shall be made available to the public upon request.

(e) (i) If a parent or guardian position on a school community council remains unfilled after an election is held, the other parent or guardian members of the council shall appoint a parent or guardian who meets the qualifications of this section to fill the position.

(ii) If a school employee position on a school community council remains unfilled after an election is held, the other school employee members of the council shall appoint a school employee to fill the position.

(iii) The [~~chair~~] cochairs or chair of the community council shall notify the local school board of each appointment made under Subsection (5)(e)(i)[~~,~~] or (ii)[~~, or (iii)~~].

(iv) A member appointed to a school community council under Subsection (5)(e)(i) or (ii) shall serve a two-year term.

(f) Initial terms shall be staggered so that no more than 50% of the council members stand for election in any one year.

(g) (i) Each public school, in consultation with its local school board, shall set the beginning date of the term of office for school community council members.

(ii) [~~Council members~~] A school community council member may serve up to three successive terms.

(iii) If a parent or guardian member's child is enrolled in the school at any time during the parent or guardian member's initial term of office, the parent or guardian member may serve up to three

successive terms even though the parent or guardian member's child is no longer enrolled in the school.

(h) [~~(i)~~] Each school community council shall elect [~~a chair and vice chair~~]:

(i) two cochairs from its parent or guardian members [~~and~~] or one cochair from its parent or guardian members and one cochair from its elected employee members[~~.~~]; or

(ii) a chair and a vice chair from its parent or guardian members.

[~~(ii) No more than one parent or guardian member or elected employee member may at the same time serve as an officer specified in Subsection (5)(h)(i).~~]

(6) (a) A school community council may create subcommittees or task forces to:

(i) advise or make recommendations to the council; or

(ii) develop all or part of a plan listed in Subsection (3).

(b) Any plan or part of a plan developed by a subcommittee or task force shall be subject to the approval of the school community council.

(c) A school community council may appoint individuals who are not council members to serve on a subcommittee or task force, including parents, school employees, or other community members.

(7) (a) A school community council shall provide the following information:

(i) the proposed school community council meeting schedule for the year, provided during the first two weeks of the school year;

(ii) a summary of the school community council's actions and activities during the first half of the school year information, provided at the mid-point of the school year; and

(iii) a summary of the annual report required under Section 53A-16-101.5 on how the school's School LAND Trust Program monies were used to enhance or improve academic excellence at the school and implement a component of the school's improvement plan, provided at the beginning of the next school year.

(b) The school community council shall provide the information described in Subsection (7)(a) by:

(i) posting the information on the school's website; and

(ii) providing individual delivery to each household that has a student attending the school by:

(A) mailing the information;

(B) delivering a voice message describing the information and explaining where to obtain the full information;

(C) sending an e-mail message containing the information;

(D) providing the information in a packet that is to be delivered to a student's parent or guardian:

(I) during the school's annual registration period; or

(II) with the student's report card; or

(E) using a combination of the methods described in Subsections (7)(b)(ii)(A) through (D).

(8) A school community council shall, at least one week prior to a meeting, post the following information on the school's website:

(a) notice of the meeting date, time, and place;

(b) an agenda for the meeting; and

(c) a summary of the previous meeting.

(9) (a) A majority of the members of a school community council is a quorum for the transaction of business.

(b) The action of a majority of the members of a quorum is the action of the school community council.

(10) A local school board shall give each school community council member a copy of the following statutes governing school community councils:

(a) Section 53A-1a-108;

(b) Section 53A-1a-108.5; and

(c) Section 53A-16-101.5.

Section 2. Section 53A-16-101.5 is amended to read:

53A-16-101.5. School LAND Trust Program -- Purpose -- Distribution of funds -- School plans for use of funds.

(1) There is established the School LAND (Learning And Nurturing Development) Trust Program for the state's public schools to provide financial resources to enhance or improve student academic achievement and implement a component of the school improvement plan.

(2) (a) The program shall be funded each fiscal year:

(i) from the Interest and Dividends Account created in Section 53A-16-101; and

(ii) in the amount of the sum of the following:

(A) the interest and dividends from the investment of money in the permanent State School Fund deposited to the Interest and Dividends Account in the immediately preceding year; and

(B) interest accrued on money in the Interest and Dividends Account in the immediately preceding fiscal year.

(b) On and after July 1, 2003, the program shall be funded as provided in Subsection (2)(a) up to [~~a maximum of~~] an amount equal to 2% of the funds provided for the Minimum School Program,

pursuant to Title 53A, Chapter 17a, Minimum School Program Act, each fiscal year.

(c) The Legislature shall annually allocate, through an appropriation to the State Board of Education, a portion of School LAND Trust Program money for the administration of the program.

(3) (a) The State Board of Education shall allocate the money referred to in Subsection (2) annually for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter as follows:

(i) school districts and the charter schools combined shall receive 10% of the funds on an equal basis; and

(ii) the remaining 90% of the funds shall be distributed on a per student basis, with each school district and charter school receiving its allocation based on the number of students in the school district and charter school as compared to the state total.

(b) [~~Each~~] A school district shall distribute its allocation under Subsection (3)(a) to each school within the district on an equal per student basis.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [~~board~~] State Board of Education may make rules regarding the time and manner in which the student count shall be made for allocation of the money.

(4) (a) Except as provided in Subsection (7), in order to receive its allocation under Subsection (3)[~~,~~]:

(i) a school shall have established a school community council [~~under~~] in accordance with Section 53A-1a-108[~~.~~]; and

(ii) the school's principal shall provide a signed, written assurance in accordance with rules of the State Board of Education that:

(A) the membership of the school community council is consistent with the membership requirements specified in Section 53A-1a-108; and

(B) the members were elected or appointed consistent with selection requirements specified in 53A-1a-108.

(b) At the direction of the Legislative Audit Subcommittee, the legislative auditor general shall:

(i) audit a sample of schools to determine compliance with requirements specified in Section 53A-1a-108 for school community council membership and the election or appointment of school community council members; and

(ii) submit an audit report to the Legislative Audit Subcommittee.

(c) The Legislative Audit Subcommittee shall forward the audit report to the Public Education Appropriations Subcommittee and the State Board of Education.

(d) (i) The State Board of Education may recommend that all or a portion of a school's allocation of School LAND Trust Program money under Subsection (3) be reduced or eliminated for a fiscal year if the school has failed to comply with requirements specified in Section 53A-1a-108 for school community council membership or the election or appointment of school community council members.

(ii) The State Board of Education shall report to the Public Education Appropriations Subcommittee on the board's action or decision regarding a school identified in an audit report as being not in compliance with requirements specified in Section 53A-1a-108 for school community council membership or the election or appointment of school community council members.

(5) (a) The school community council or its subcommittee shall [~~develop~~] create a program to use its allocation under Subsection (3) to implement a component of the school's improvement plan, including:

(i) the school's identified most critical academic needs;

(ii) a recommended course of action to meet the identified academic needs;

(iii) a specific listing of any programs, practices, materials, or equipment which the school will need to implement a component of its school improvement plan to have a direct impact on the instruction of students and result in measurable increased student performance; and

(iv) how the school intends to spend its allocation of funds under this section to enhance or improve academic excellence at the school.

(b) The school may develop a multiyear program, but the program shall be [~~presented and~~] approved by the school community council and the local school board of the district in which the school is located annually and as a prerequisite to receiving program funds allocated under this section.

(c) (i) A school community council shall consider the approval of a plan for the use of School LAND Trust Program money in a meeting of the school community council at which a quorum is present.

(ii) If a majority of the quorum votes to approve a plan for the use of School LAND Trust Program money, the plan is approved.

(d) A school community council shall:

(i) submit a plan for the use of School LAND Trust Program money that is approved in accordance with Subsection (5)(c) to the local school board for the local school board's approval; and

(ii) include with the plan a report noting the number of school community council members who voted for or against the approval of the plan and the number of members who were absent for the vote.

(e) (i) A local school board may approve or disapprove a plan for the use of School LAND Trust Program money.

(ii) If a local school board disapproves a plan for the use of School LAND Trust Program money, the local school board shall provide a written explanation of why the plan was disapproved and request the school community council who submitted the plan to revise the plan.

(iii) The school community council shall submit a revised plan to the local school board for approval.

(6) (a) Each school shall:

(i) implement the program as approved by the school community council and approved by the local school board;

(ii) provide ongoing support for the council's or its subcommittee's program; and

(iii) meet school board reporting requirements regarding financial and performance accountability of the program.

(b) (i) Each school through its council or its subcommittee shall prepare and present an annual report of the program to its local school board at the end of the school year.

(ii) The report shall detail the use of program funds received by the school under this section and an assessment of the results obtained from the use of the funds.

(iii) A summary of the report shall be sent to households in accordance with the provisions under Subsection 53A-1a-108(7).

(7) (a) The governing board of a charter school shall prepare a plan for the use of [~~school trust~~] School LAND Trust Program money that includes the elements listed in Subsection (5).

(b) The plan shall be subject to approval by the entity that authorized the establishment of the charter school.

(8) (a) A school community council and a governing board of a charter school may not be required to:

(i) send a letter to legislators or other elected officials on the school's use of School LAND Trust Program money as a condition of receiving the money; or

(ii) report to the State Board of Education or any local school board on whether any letters were sent to legislators or other elected officials on the school's use of School LAND Trust Program money.

(b) Subsection (8)(a)(i) does not apply to the annual report to the local school board required by Subsection (6)(b).

Section 3. Coordinating H.B. 152 with S.B. 142 and H.B. 186 -- Superseding technical amendments.

(1) If this H.B. 152 and H.B. 186, Utah Code Technical Amendments, both pass, it is the intent of the Legislature that the amendments to Subsection 53A-1a-108 (5)(e)(iii) in this bill supersede the amendments to Subsection 53A-1a-108 (5)(e)(iii) in H.B. 186 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

(2) If this H.B. 152, H.B. 186, Utah Code Technical Amendments, and S.B. 142, Public Official Contact Information, all pass, it is the intent of the Legislature that the amendments to Subsection 53A-1a-108 (5)(e)(iii) in this bill supersede the amendments to Subsection 53A-1a-108 (5)(e)(iii) in H.B. 186 and S.B. 142 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

CHAPTER 294
H. B. 177
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011
(Exception clause in Section 9)

CANINE BODY ARMOR RESTRICTED ACCOUNT AND INCOME TAX CONTRIBUTION

Chief Sponsor: Richard A. Greenwood
Senate Sponsor: Ralph Okerlund
Cosponsors: Patrice M. Arent
Jackie Biskupski
David G. Butterfield
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Steve Eliason
Brad J. Galvez
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Lee B. Perry
Paul Ray
Stephen E. Sandstrom
Jennifer M. Seelig
Mark A. Wheatley
Ryan D. Wilcox
Larry B. Wiley
Carl Wimmer

LONG TITLE

General Description:

This bill amends the Public Safety Code and the Individual Income Tax Act to enact the Canine Body Armor Restricted Account and provide an income tax contribution for canine body armor.

Highlighted Provisions:

This bill:

- enacts a chapter within the Public Safety Code to:
  - create the Canine Body Armor Restricted Account;
  - address the administration of the Canine Body Armor Restricted Account;
  - address the distribution of amounts deposited into the Canine Body Armor Restricted Account; and
  - grant rulemaking authority to the Department of Public Safety;
- includes the Canine Body Armor Restricted Account on the list of nonlapsing funds and accounts;
- repeals obsolete language;
- enacts an individual income tax contribution for canine body armor;
- provides that if the collections from the contribution do not meet a certain threshold amount, the State Tax Commission shall remove the designation for the contribution from the individual income tax return and may not collect the contribution; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.This bill has retrospective operation for a taxable year beginning on or after January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-10-1304, as last amended by Laws of Utah 2009, Chapter 17
63J-1-602.3, as enacted by Laws of Utah 2010, Chapter 265

ENACTS:

53-16-101, Utah Code Annotated 1953
53-16-102, Utah Code Annotated 1953
53-16-201, Utah Code Annotated 1953
53-16-301, Utah Code Annotated 1953
53-16-302, Utah Code Annotated 1953
59-10-1315, Utah Code Annotated 1953

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

Section 1. Section 53-16-101 is enacted to read:

CHAPTER 16. CANINE BODY ARMOR RESTRICTED ACCOUNT ACT

Part 1. General Provisions

53-16-101. Title.

This chapter is known as the "Canine Body Armor Restricted Account Act."

Section 2. Section 53-16-102 is enacted to read:

53-16-102. Definitions.

(1) "Canine body armor" means a product:

(a) sold or offered for sale as personal protective body covering; and

(b) that is intended to protect a police service canine against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(2) "Police service canine" means a dog that:

(a) is used by a law enforcement agency;

(b) is specially trained or is in training for law enforcement work; and

(c) assists a law enforcement agency in the performance of law enforcement duties.

Section 3. Section 53-16-201 is enacted to read:

Part 2. Canine Body Armor Restricted Account

53-16-201. Canine Body Armor Restricted Account -- Creation -- Interest.

(1) There is created within the General Fund a restricted account known as the "Canine Body Armor Restricted Account."

(2) The restricted account shall be funded by the following amounts:

(a) contributions deposited into the restricted account in accordance with Section 59-10-1315;

(b) private contributions;

(c) donations or grants from public or private entities;

(d) amounts received in accordance with Subsection 53-16-301(9); and

(e) interest described in Subsection (3).

(3) (a) The restricted account shall earn interest.

(b) Interest earned on the restricted account shall be deposited into the restricted account.

(4) The commissioner shall distribute money appropriated by the Legislature to the department from the restricted account as provided in Section 53-16-301.

Section 4. Section 53-16-301 is enacted to read:

Part 3. Distribution of Amounts in Canine Body Armor Restricted Account

53-16-301. Commissioner to distribute amounts deposited into Canine Body Armor Restricted Account -- Procedures for distribution.

(1) Subject to the other provisions of this section, the commissioner shall distribute amounts deposited into the restricted account in accordance with Section 53-16-201 to one or more law enforcement agencies.

(2) A law enforcement agency that receives a distribution from the commissioner in accordance with Subsection (1) shall expend the distribution only to purchase canine body armor for one or more police service canines.

(3) In accordance with any rules the department makes as authorized under Section 53-16-302, each year a law enforcement agency may apply to the commissioner to receive a distribution under this section by filing an application with the department:

(a) on or before November 1; and

(b) on a form provided by the department.

(4) The application:

(a) shall include:

(i) information required by the department establishing that the law enforcement agency intends to expend the distribution to purchase canine body armor for one or more police service canines;

(ii) a written cost estimate prepared by the seller of the canine body armor of the cost of the canine body armor the law enforcement agency seeks to purchase;

(iii) information required by the department establishing that each police service canine for which the law enforcement agency seeks to purchase canine body armor:

(A) is owned by and in the possession of the law enforcement agency;

(B) is specially trained or is in training for law enforcement work;

(C) assists or will assist a law enforcement agency in the performance of law enforcement duties; and

(D) has been trained by or is training with a law enforcement officer who is qualified to train a police service canine; and

(iv) information required by the department establishing that the law enforcement agency has a vehicle to transport each police service canine for which the law enforcement agency seeks to purchase canine body armor; and

(b) may include other information the department requires by rule.

(5) The department shall determine on or before the November 30 immediately following the November 1 described in Subsection (3) whether a law enforcement agency's application to the department meets the requirements of Subsection (4).

(6) Subject to Subsections (7) and (8), the commissioner shall distribute money appropriated by the Legislature to the department from the restricted account to one or more law enforcement agencies that meet the requirements of Subsection (4):

(a) in a total amount that does not exceed the money appropriated by the Legislature to the department from the restricted account;

(b) on or before the December 31 immediately following the November 1 described in Subsection (3); and

(c) in an amount that for a calendar year for each law enforcement agency described in this Subsection (6) does not exceed the lesser of:

(i) $3,000; or

(ii) the amount listed on the written cost estimate described in Subsection (4)(a)(ii).

(7) If the total amount of distributions law enforcement agencies seek under this section exceeds the money appropriated by the Legislature to the department from the restricted account, the commissioner shall make the distributions required by this section in the order of the date each law enforcement agency files the application required by Subsection (3) with the department until the appropriation from the restricted account is expended.

(8) If the total amount of distributions the commissioner makes under Subsection (6) is less than the money appropriated by the Legislature to the department from the restricted account, the commissioner shall make an additional distribution to one or more law enforcement agencies:

(a) that:

(i) meet the requirements of Subsection (4); and

(ii) provide a written cost estimate described in Subsection (4)(a)(ii) to the department that exceeds $3,000;

(b) in an amount that for a calendar year for each law enforcement agency described in this Subsection (8) does not exceed the lesser of:

(i) $3,000; or

(ii) the difference between the amount listed on the written cost estimate described in Subsection (4)(a)(ii) and $3,000;

(c) in the order of the date each law enforcement agency files the application required by Subsection (3) with the department; and

(d) until the sooner of:

(i) the date each law enforcement agency described in this Subsection (8) receives an additional distribution of not to exceed the amount described in Subsection (8)(b); or

(ii) the date the appropriation from the restricted account is expended.

(9) If a law enforcement agency that receives a distribution under this section does not expend the distribution to purchase canine body armor within 90 days after the date the law enforcement agency receives the distribution:

(a) the law enforcement agency shall return the distribution to the department; and

(b) the department shall deposit the distribution a law enforcement agency returns in accordance with Subsection (9)(a) into the restricted account.

Section 5. Section 53-16-302 is enacted to read:

53-16-302. Department rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with Section 53-16-301 prescribing information that a law enforcement agency shall include with an application under Section 53-16-301.

Section 6. Section 59-10-1304 is amended to read:

59-10-1304. Removal of designation and prohibitions on collection for certain contributions on income tax return -- Conditions for removal and prohibitions on collection -- Commission reporting requirements.

(1) (a) If a contribution or combination of contributions described in Subsection (1)(b) generate less than $30,000 per year for three consecutive years, the commission shall remove the designation for the contribution from the individual income tax return and may not collect the contribution from a resident or nonresident individual beginning two taxable years after the three-year period for which the contribution generates less than $30,000 per year.

(b) The following contributions apply to Subsection (1)(a):

(i) the contribution provided for in Section 59-10-1305;

(ii) the contribution provided for in Section 59-10-1306;

(iii) the sum of the contributions provided for in Subsection 59-10-1307(1);

(iv) the contribution provided for in Section 59-10-1308; [~~or~~]

(v) the contribution provided for in Section 59-10-1310[~~.~~]; or

(vi) the contribution provided for in Section 59-10-1315.

(2) If the commission removes the designation for a contribution under Subsection (1), the commission shall report to the Revenue and Taxation Interim Committee that the commission removed the designation on or before the November interim meeting of the year in which the commission determines to remove the designation.

Section 7. Section 59-10-1315 is enacted to read:

59-10-1315. Contribution to Canine Body Armor Restricted Account.

(1) Except as provided in Section 59-10-1304, for a taxable year beginning on or after January 1, 2011, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

(a) deposited into the Canine Body Armor Restricted Account created in Section 53-16-201; and

(b) expended as provided in Title 53, Chapter 16, Canine Body Armor Restricted Account Act.

(2) The commission shall:

(a) determine the total amount of contributions designated in accordance with this section for a taxable year; and

(b) credit the amount described in Subsection (2)(a) to the Canine Body Armor Restricted Account created in Section 53-16-201.

Section 8. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) Certain funds associated with the Law Enforcement Operations Account, as provided in Section 51-9-411.

(2) The Public Safety Honoring Heroes Restricted Account created in Section 53-1-118.

(3) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2-107.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) The DNA Specimen Restricted Account created in Section 53-10-407.

(7) The Canine Body Armor Restricted Account created in Section 53-16-201.

[~~(7)~~] (8) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

[~~(8)~~] (9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for new teacher bonus and performance-based compensation plans, as provided in Section 53A-17a-148.

[~~(9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for implementation of proposals to improve mathematics achievement test scores, as provided in Section 53A-17a-152.~~]

(10) The School Building Revolving Account created in Section 53A-21-401.

(11) Money received by the State Office of Rehabilitation for the sale of certain products or services, as provided in Section 53A-24-105.

(12) The State Board of Regents, as provided in Section 53B-6-104.

(13) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

(14) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(15) Certain surcharges on residence and business telecommunications access lines imposed by the Public Service Commission, as provided in Section 54-8b-10.

(16) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

(17) The Nurse Education and Enforcement Account created in Section 58-31b-103.

(18) The Certified Nurse Midwife Education and Enforcement Account created in Section 58-44a-103.

(19) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

(20) The Professional Geologist Education and Enforcement Account created in Section 58-76-103.

(21) Certain money in the Water Resources Conservation and Development Fund, as provided in Section 59-12-103.

Section 9. Retrospective operation -- Effective date.

(1) The amendments to Section 59-10-1304 have retrospective operation for a taxable year beginning on or after January 1, 2011.

(2) The enactment of Section 59-10-1315 has retrospective operation for a taxable year beginning on or after January 1, 2011.

(3) The amendments to Section 63J-1-602.3 take effect on May 10, 2011.

(4) The enactments of the following sections take effect on May 10, 2011:

(a) Section 53-16-101;

(b) Section 53-16-102;

(c) Section 53-16-201;

(d) Section 53-16-301; and

(e) Section 53-16-302.

CHAPTER 295
H. B. 195
Passed March 1, 2011
Approved March 25, 2011
Effective May 10, 2011

DEBT SERVICE OBLIGATIONS OF A DIVIDED SCHOOL DISTRICT

Chief Sponsor: Kenneth W. Sumsion
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies requirements for the imposition of a tax on property within a new district and remaining district to pay the debt service obligations of a divided school district.

Highlighted Provisions:

This bill:

- provides that, if a new district is created on or after May 10, 2011, a tax shall be imposed on property within the new district and the remaining district at a rate that:
  - generates the amount of revenue required each year to meet the outstanding bonded debt obligations of the divided school district; and
  - is uniform within the new district and remaining district; and
- makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-2-120, as last amended by Laws of Utah 2007, Chapters 215 and 306
53A-2-121, as last amended by Laws of Utah 2008, Chapter 92

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

Section 1. Section 53A-2-120 is amended to read:

53A-2-120. Transfer of school property to new school district.

(1) (a) (i) On July 1 of the year following the school board elections for [~~the new and existing districts~~] a new district created pursuant to a citizens' initiative petition or school board request under Section 53A-2-118 and an existing district as provided in Section 53A-2-119, the board of the existing district shall convey and deliver to the board of the new district all school property which the new district is entitled to receive.

[~~(b) (i)~~] (ii) Any disagreements as to the disposition of school property shall be resolved by the county legislative body.

[~~(ii)~~] (iii) Subsection (1)[~~(b)(i)~~](a)(ii) does not apply to disagreements between transition teams about the proper allocation of property under Subsection 53A-2-118.1(4).

(b) An existing district shall transfer property to a new district created under Section 53A-2-118.1 in accordance with Section 53A-2-118.1.

(2) Title vests in the new school board, including all rights, claims, and causes of action to or for the property, for the use or the income from the property, for conversion, disposition, or withholding of the property, or for any damage or injury to the property.

(3) The new school board may bring and maintain actions to recover, protect, and preserve the property and rights of the district's schools and to enforce contracts.

[~~(4) (a) The intangible property of the existing school district shall be prorated between it and the new district on the same basis used to determine the new district's proportionate share of the existing district's indebtedness under Section 53A-2-121.~~]

[~~(b) Subsection (4)(a) does not apply to the allocation of intangible property between a remaining district and a new district created under Section 53A-2-118.1.~~]

Section 2. Section 53A-2-121 is amended to read:

53A-2-121. Tax to pay for indebtedness of divided school district.

(1) (a) [~~The~~] For a new district created prior to May 10, 2011, the local school boards of the remaining and new districts shall determine the portion of the [~~existing~~] divided school district's bonded indebtedness and other indebtedness for which the property within the new district remains subject to the levy of taxes to pay a proportionate share of the [~~existing~~] divided school district's outstanding indebtedness.

(b) The proportionate share of the [~~existing~~] divided school district's outstanding indebtedness for which property within the new district remains subject to the levy of taxes shall be calculated by determining the proportion that the total assessed valuation of the property within the new district bears to the total assessed valuation of the [~~existing~~] divided school district:

(i) in the year immediately preceding the date the new district was created; or

(ii) at a time mutually agreed upon by the [~~school district board~~] local school boards of the new district and [~~the school district board of~~] the remaining district.

(c) The agreement reflecting the determinations made under this Subsection (1) shall take effect upon being filed with the county legislative body and the State Board of Education.

(2) [~~The~~] (a) Except as provided in Subsection (2)(b), the local school board of [~~the remaining~~] a new district created prior to May 10, 2011 shall [~~continue to~~] levy a tax on property within the new district sufficient to pay the new district's proportionate share of the indebtedness

determined under [~~this section, and shall annually report the amount of the proceeds of the tax to the business administrator of the new district~~] Subsection (1).

(b) If a new district has money available to pay the new district's proportionate share of the indebtedness determined under Subsection (1), the new district may abate a property tax to the extent of money available.

(3) As used in Subsections (4) and (5), "outstanding bonded indebtedness" means debt owed for a general obligation bond issued by the divided school district:

(a) prior to the creation of the new district; or

(b) in accordance with a mutual agreement of the local school boards of the remaining and new districts under Subsection (6).

(4) If a new district is created on or after May 10, 2011, property within the new district and the remaining district is subject to the levy of a tax to pay the divided school district's outstanding bonded indebtedness as provided in Subsection (5).

(5) (a) Except as provided in Subsection (5)(b), the local school board of the new district and the local school board of the remaining district shall impose a tax levy at a rate that:

(i) generates from the combined districts the amount of revenue required each year to meet the outstanding bonded indebtedness of the divided school district; and

(ii) is uniform within the new district and remaining district.

(b) A local school board of a new district may abate a property tax required to be imposed under Subsection (5)(a) to the extent the new district has money available to pay to the remaining district the amount of revenue that would be generated within the new district from the tax rate specified in Subsection (5)(a).

[~~(3)~~] (6) (a) The local school boards of the remaining and new districts shall determine by mutual agreement the disposition of bonds approved but not issued by the [~~existing~~] divided school district before the creation of the new district based primarily on the representation made to the voters at the time of the bond election.

(b) Before a determination is made under Subsection [~~(3)(a)~~] (6)(a), a remaining district may not issue bonds approved but not issued before the creation of the new district if property in the new district would be subject to the levy of a tax to pay the bonds.

CHAPTER 296
H. B. 199
Passed March 9, 2011
Approved March 25, 2011
Effective May 10, 2011

ADVERTISEMENTS ON SCHOOL BUSES

Chief Sponsor: Jim Bird
Senate Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill authorizes the sale of advertising space on a school bus.

Highlighted Provisions:

This bill:

- allows a local school board or charter school governing board to sell advertising space on the exterior of a school bus;
- requires a local school board or charter school governing board to adopt guidelines for the type of advertising permitted on a school bus;
- prohibits certain types of advertising on a school bus;
- requires the Department of Transportation to make rules governing the placement and size of an advertisement on a school bus; and
- requires that revenue from the sale of advertising space on a school bus be used for pupil transportation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

41-6a-1309, Utah Code Annotated 1953

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

Section 1. Section 41-6a-1309 is enacted to read:

41-6a-1309. Advertising on a school bus.

(1) A local school board or charter school governing board may sell advertising space on the exterior of a school bus in accordance with this section.

(2) (a) A local school board or charter school governing board that sells advertising space on the exterior of a school bus shall adopt guidelines for the type of advertising that will be permitted.

(b) Advertising on a school bus:

(i) shall be age appropriate;

(ii) shall be consistent with the instructional requirements of Section 53A-13-101;

(iii) may not contain:

(A) promotion of any substance or activity that is illegal for minors, such as alcohol, tobacco, drugs, or gambling;

(B) promotion of any political party, candidate, or issue; or

(C) sexual material; and

(iv) may not resemble a traffic-control device as defined in Section 41-6a-102.

(3) (a) The Department of Transportation shall make and enforce rules pursuant to Section 41-6a-1304 governing the placement and size of an advertisement on a school bus.

(b) Rules made under Subsection (3)(a) shall:

(i) prohibit the placement of an advertisement on the back or the front of a school bus; and

(ii) limit the size of an advertisement to no more than 35% of the area of the side of a school bus.

(4) (a) A school bus advertisement shall be painted or affixed by decal on a school bus in a manner that complies with rules adopted under Subsection (3).

(b) A commercial advertiser that contracts with a school district for the use of space for an advertisement shall pay:

(i) the cost of placing the advertisement on a school bus; and

(ii) for the removal of the advertisement after the term of the contract has expired.

(5) A school district or charter school shall use revenue from the sale of advertising space on a school bus for expenditures made within accounting function classification 2700, School Transportation Services, of the Financial Accounting for Local and State School Systems guidelines developed by the National Center for Education Statistics.

CHAPTER 297
H. B. 213
Passed February 7, 2011
Approved March 25, 2011
Effective May 10, 2011
(Exception clause in Section 344)

STATUTORY CONSTRUCTION AMENDMENTS

Chief Sponsor: Derek E. Brown
Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code.

Highlighted Provisions:

This bill:

- amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

17-3-1, as last amended by Laws of Utah 2004, Chapter 371
17-3-8, Utah Code Annotated 1953
17-8-7, as last amended by Laws of Utah 1993, Chapter 227
17-11-2, as last amended by Laws of Utah 1993, Chapter 227
17-15-16, as last amended by Laws of Utah 1993, Chapter 227
17-16-4, Utah Code Annotated 1953
17-16-9, as last amended by Laws of Utah 1993, Chapters 33 and 227
17-16-16, as last amended by Laws of Utah 1971, Chapter 25
17-16a-3, as enacted by Laws of Utah 1983, Chapter 46
17-16a-6, as last amended by Laws of Utah 1993, Chapter 227
17-18-1.9, as enacted by Laws of Utah 1993, Chapter 38
17-19-7, Utah Code Annotated 1953
17-19-14, Utah Code Annotated 1953
17-22-6, Utah Code Annotated 1953
17-22-21, Utah Code Annotated 1953
17-22-22, Utah Code Annotated 1953
17-22-23, Utah Code Annotated 1953
17-22-27, as last amended by Laws of Utah 2004, Chapter 301
17-23-16, as last amended by Laws of Utah 2001, Chapter 241
17-27a-513, as renumbered and amended by Laws of Utah 2005, Chapter 254
17-27a-518, as renumbered and amended by Laws of Utah 2005, Chapter 254
17-28-11, as last amended by Laws of Utah 1993, Chapter 227
17-30-8, as enacted by Statewide Initiative A, Nov. 8, 1960
17-30-22, as enacted by Statewide Initiative A, Nov. 8, 1960
17-31-3, as last amended by Laws of Utah 1996, Chapter 79
17-33-10, as last amended by Laws of Utah 2003, Chapter 65
17-33-15, as last amended by Laws of Utah 1993, Chapter 227
17-34-5, as last amended by Laws of Utah 2000, Chapter 199
17-35b-303, as last amended by Laws of Utah 2007, Chapter 329
17-35b-304, as enacted by Laws of Utah 1998, Chapter 369
17-36-10, as last amended by Laws of Utah 1999, Chapter 300
17-36-17, as last amended by Laws of Utah 1999, Chapter 300
17-37-4, as last amended by Laws of Utah 2002, Chapter 95
17-38-4, as last amended by Laws of Utah 1983, Chapter 291
17-41-301, as last amended by Laws of Utah 2006, Chapter 194
17-41-401, as last amended by Laws of Utah 1997, Chapter 383
17-52-401, as last amended by Laws of Utah 2003, Chapter 131
17-53-209, as renumbered and amended by Laws of Utah 2000, Chapter 133
17-53-311, as last amended by Laws of Utah 2008, Chapters 360 and 382
17B-1-304, as last amended by Laws of Utah 2009, Chapter 388
17B-1-506, as last amended by Laws of Utah 2008, Chapter 3
17B-1-510, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-1-512, as last amended by Laws of Utah 2009, Chapters 350 and 388
17B-1-607, as renumbered and amended by Laws of Utah 2007, Chapter 329
17B-2a-807, as last amended by Laws of Utah 2010, Chapter 281
17B-2a-818.5, as last amended by Laws of Utah 2010, Chapter 229
18-1-1, as last amended by Laws of Utah 1971, Chapter 29
19-1-206, as last amended by Laws of Utah 2010, Chapters 218 and 229
19-2-109.1, as last amended by Laws of Utah 2009, Chapters 183 and 377
19-2-113, as last amended by Laws of Utah 2010, Chapter 324
19-2-115, as last amended by Laws of Utah 2008, Chapter 382
19-3-302, as last amended by Laws of Utah 2001, Chapter 107
19-3-308, as last amended by Laws of Utah 2009, Chapter 183
19-4-112, as last amended by Laws of Utah 1998, Chapter 126

19-5-102, as last amended by Laws of Utah 2001, Chapter 274
19-5-115, as last amended by Laws of Utah 2010, Chapter 324
19-5-116, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-5-121, as last amended by Laws of Utah 2009, Chapter 183
19-6-108, as last amended by Laws of Utah 2007, Chapter 72
19-6-116, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-202, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-203, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-205, as last amended by Laws of Utah 1993, Chapter 227
19-6-413, as last amended by Laws of Utah 1992, Chapter 214
19-6-714, as enacted by Laws of Utah 1993, Chapter 283
19-6-814, as renumbered and amended by Laws of Utah 2000, Chapter 51
19-9-105, as last amended by Laws of Utah 2008, Chapter 382
19-9-109, as renumbered and amended by Laws of Utah 2003, Chapter 184
19-10-104, as enacted by Laws of Utah 2003, Chapter 44
20A-1-401, as last amended by Laws of Utah 2008, Chapter 225
20A-1-508, as last amended by Laws of Utah 2010, Chapter 197
20A-1-509.1, as last amended by Laws of Utah 2010, Chapter 197
20A-1-703, as last amended by Laws of Utah 2010, Chapter 324
20A-2-102.5, as last amended by Laws of Utah 2008, Chapter 225
20A-2-105, as last amended by Laws of Utah 2008, Chapter 276
20A-2-306, as last amended by Laws of Utah 2007, Chapter 75
20A-4-201, as last amended by Laws of Utah 2006, Chapter 326
20A-5-403, as last amended by Laws of Utah 2009, Chapter 45
20A-6-302, as last amended by Laws of Utah 2006, Chapter 326
20A-7-202, as last amended by Laws of Utah 2008, Chapter 237
20A-7-204.1, as last amended by Laws of Utah 2010, Chapter 90
20A-7-702 (Superseded 01/01/12), as last amended by Laws of Utah 2008, Chapters 3, 82, and 225
20A-7-702 (Effective 01/01/12), as last amended by Laws of Utah 2008, Chapters 3, 82, 225, and 248
20A-7-706, as last amended by Laws of Utah 2008, Chapter 225
20A-9-403, as last amended by Laws of Utah 2008, Chapter 225
20A-11-401, as last amended by Laws of Utah 2009, Chapter 361
20A-11-1603, as enacted by Laws of Utah 2010, Chapter 12
20A-14-103, as last amended by Laws of Utah 2008, Chapter 8
20A-14-201, as last amended by Laws of Utah 2007, Chapter 215
20A-14-202, as last amended by Laws of Utah 2008, Chapter 8
22-1-11, Utah Code Annotated 1953
22-3-104, as enacted by Laws of Utah 2004, Chapter 285
22-3-202, as enacted by Laws of Utah 2004, Chapter 285
22-3-302, as enacted by Laws of Utah 2004, Chapter 285
22-3-303, as enacted by Laws of Utah 2004, Chapter 285
22-3-403, as enacted by Laws of Utah 2004, Chapter 285
22-3-405, as enacted by Laws of Utah 2004, Chapter 285
22-3-406, as enacted by Laws of Utah 2004, Chapter 285
22-3-411, as enacted by Laws of Utah 2004, Chapter 285
22-3-414, as enacted by Laws of Utah 2004, Chapter 285
22-3-505, as last amended by Laws of Utah 2009, Chapter 96
22-3-506, as enacted by Laws of Utah 2004, Chapter 285
22-3-601, as enacted by Laws of Utah 2004, Chapter 285
23-13-2, as last amended by Laws of Utah 2010, Chapter 256
23-13-17, as last amended by Laws of Utah 2005, Chapter 2
23-14-2, as last amended by Laws of Utah 2010, Chapter 286
23-15-2, as enacted by Laws of Utah 1971, Chapter 46
23-15-9, as last amended by Laws of Utah 2008, Chapter 69
23-16-3, as last amended by Laws of Utah 2003, Chapter 228
23-16-4, as last amended by Laws of Utah 2009, Chapter 183
23-17-4, as enacted by Laws of Utah 1971, Chapter 46
23-17-6, as last amended by Laws of Utah 1998, Chapter 242
23-17-8, as enacted by Laws of Utah 1971, Chapter 46
23-18-5, as last amended by Laws of Utah 1980, Chapter 28
23-19-9, as last amended by Laws of Utah 2008, Chapter 382
23-19-14, as last amended by Laws of Utah 2003, Chapter 171
23-19-17.5, as last amended by Laws of Utah 2007, Chapter 187
23-19-38.2, as last amended by Laws of Utah 2008, Chapter 382
23-20-1, as last amended by Laws of Utah 2002, Chapter 185

23-20-9, as last amended by Laws of Utah 2007, Chapter 136
23-20-14, as last amended by Laws of Utah 2000, Chapter 6
23-20-20, as last amended by Laws of Utah 2006, Chapter 325
23-20-28, as last amended by Laws of Utah 1995, Chapter 211
23-20-29, as enacted by Laws of Utah 1986, Chapter 67
23-20-30, as last amended by Laws of Utah 1995, Chapter 211
23-20-31, as last amended by Laws of Utah 2009, Chapter 256
23-21-2, as last amended by Laws of Utah 1993, Chapter 227
23-22-1, as last amended by Laws of Utah 1998, Chapter 140
23-22-3, as last amended by Laws of Utah 1992, Chapter 260
23-23-11, as last amended by Laws of Utah 1997, Chapter 258
23-24-1, as last amended by Laws of Utah 2010, Chapter 289
24-1-8, as last amended by Laws of Utah 2007, Chapter 180
25-5-2, as last amended by Laws of Utah 1995, Chapter 20
25-6-9, as last amended by Laws of Utah 2000, Chapter 252
26-1-5, as last amended by Laws of Utah 2008, Chapter 382
26-1-7.5, as last amended by Laws of Utah 2010, Chapter 286
26-1-11, as enacted by Laws of Utah 1981, Chapter 126
26-1-25, as enacted by Laws of Utah 1981, Chapter 126
26-1-32, as enacted by Laws of Utah 1981, Chapter 126
26-3-8, as enacted by Laws of Utah 1981, Chapter 126
26-4-2, as last amended by Laws of Utah 2009, Chapter 223
26-4-9, as last amended by Laws of Utah 1999, Chapter 289
26-4-12, as last amended by Laws of Utah 2000, Chapter 86
26-4-20, as last amended by Laws of Utah 1993, Chapter 38
26-6-3, as last amended by Laws of Utah 2008, Chapter 130
26-6-18, as enacted by Laws of Utah 1981, Chapter 126
26-6-20, as last amended by Laws of Utah 2000, Chapter 86
26-6b-3, as last amended by Laws of Utah 2008, Chapter 115
26-6b-3.1, as enacted by Laws of Utah 2006, Chapter 185
26-7-1, as enacted by Laws of Utah 1981, Chapter 126
26-8a-103, as last amended by Laws of Utah 2010, Chapter 286
26-8a-203, as last amended by Laws of Utah 2000, Chapter 305
26-8a-207, as last amended by Laws of Utah 2010, Chapter 161
26-8a-253, as last amended by Laws of Utah 2006, Chapter 310
26-8a-405.2, as last amended by Laws of Utah 2010, Chapter 187
26-8a-405.3, as last amended by Laws of Utah 2010, Chapter 187
26-8a-405.5, as enacted by Laws of Utah 2010, Chapter 187
26-8a-406, as last amended by Laws of Utah 2009, Chapter 388
26-8a-408, as enacted by Laws of Utah 1999, Chapter 141
26-8a-410, as enacted by Laws of Utah 1999, Chapter 141
26-8a-413, as last amended by Laws of Utah 2003, Chapter 213
26-10b-102, as renumbered and amended by Laws of Utah 2010, Chapter 340
26-15-8, as last amended by Laws of Utah 2006, Chapter 91
26-18-3, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
26-18-4, as last amended by Laws of Utah 2008, Chapter 62
26-18-5, as last amended by Laws of Utah 1988, Chapter 21
26-18-10, as last amended by Laws of Utah 2008, Chapter 62
26-18-11, as enacted by Laws of Utah 1988, Chapter 12
26-18-501, as enacted by Laws of Utah 2004, Chapter 215
26-18-502, as enacted by Laws of Utah 2004, Chapter 215
26-18-503, as last amended by Laws of Utah 2008, Chapter 347
26-18-505, as enacted by Laws of Utah 2008, Chapter 219
26-19-7, as last amended by Laws of Utah 2005, Chapter 103
26-19-8, as last amended by Laws of Utah 2007, Chapter 64
26-20-3, as last amended by Laws of Utah 1986, Chapter 46
26-20-6, as last amended by Laws of Utah 1986, Chapter 46
26-20-8, as enacted by Laws of Utah 1981, Chapter 126
26-20-9.5, as last amended by Laws of Utah 2007, Chapter 48
26-20-12, as repealed and reenacted by Laws of Utah 2007, Chapter 48
26-20-14, as enacted by Laws of Utah 2007, Chapter 48
26-21-9, as last amended by Laws of Utah 2000, Chapter 86
26-21-9.5, as last amended by Laws of Utah 2009, Chapter 267
26-23-7, as enacted by Laws of Utah 1981, Chapter 126
26-23-10, as enacted by Laws of Utah 1981, Chapter 126
26-23b-104, as enacted by Laws of Utah 2002, Chapter 155

26-25-5, as last amended by Laws of Utah 1991, Chapter 241
26-28-105, as enacted by Laws of Utah 2007, Chapter 60
26-28-106, as enacted by Laws of Utah 2007, Chapter 60
26-28-107, as enacted by Laws of Utah 2007, Chapter 60
26-28-111, as enacted by Laws of Utah 2007, Chapter 60
26-28-114, as enacted by Laws of Utah 2007, Chapter 60
26-28-120, as enacted by Laws of Utah 2007, Chapter 60
26-28-121, as last amended by Laws of Utah 2008, Chapter 32
26-28-124, as enacted by Laws of Utah 2007, Chapter 60
26-31-1, as enacted by Laws of Utah 1981, Chapter 126
26-33a-104, as last amended by Laws of Utah 2008, Chapter 382
26-33a-106.5, as last amended by Laws of Utah 2005, Chapter 266
26-33a-111, as enacted by Laws of Utah 1990, Chapter 305
26-34-2, as last amended by Laws of Utah 2007, Chapter 306
26-35a-107, as enacted by Laws of Utah 2004, Chapter 284
26-36a-102, as enacted by Laws of Utah 2010, Chapter 179
26-36a-203, as enacted by Laws of Utah 2010, Chapter 179
26-40-110, as last amended by Laws of Utah 2010, Chapter 351
26-41-104, as last amended by Laws of Utah 2008, Chapters 64 and 382
26-47-103, as last amended by Laws of Utah 2010, Chapter 323
26-49-202, as enacted by Laws of Utah 2008, Chapter 242
26-49-701, as enacted by Laws of Utah 2008, Chapter 242
26A-1-112, as last amended by Laws of Utah 2002, Chapter 249
26A-1-126, as enacted by Laws of Utah 2005, Chapter 153
29-1-2, as enacted by Laws of Utah 1953, Chapter 47
29-1-3, as enacted by Laws of Utah 1953, Chapter 47
30-1-4.5, as last amended by Laws of Utah 2004, Chapter 261
30-1-5, as last amended by Laws of Utah 2001, Chapter 129
30-1-10, Utah Code Annotated 1953
30-1-32, as last amended by Laws of Utah 1993, Chapter 227
30-1-33, as enacted by Laws of Utah 1971, Chapter 64
30-1-35, as enacted by Laws of Utah 1971, Chapter 64
30-1-37, as enacted by Laws of Utah 1971, Chapter 64
30-2-7, Utah Code Annotated 1953
30-3-16.7, as enacted by Laws of Utah 1969, Chapter 72
30-3-17, as last amended by Laws of Utah 1969, Chapter 72
30-3-17.1, as last amended by Laws of Utah 2008, Chapter 3
30-3-18, as last amended by Laws of Utah 1997, Chapter 215
30-3-33, as last amended by Laws of Utah 2008, Chapter 146
30-8-3, as enacted by Laws of Utah 1994, Chapter 105
31A-2-301, as last amended by Laws of Utah 1987, Chapters 91 and 161
31A-2-302, as last amended by Laws of Utah 2008, Chapter 382
31A-5-208, as last amended by Laws of Utah 1991, Chapter 5
31A-5-305, as last amended by Laws of Utah 2007, Chapter 309
31A-6a-104, as last amended by Laws of Utah 2008, Chapter 345
31A-8a-201, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-203, as last amended by Laws of Utah 2008, Chapter 382
31A-8a-204, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-205, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-206, as enacted by Laws of Utah 2005, Chapter 58
31A-8a-207, as enacted by Laws of Utah 2005, Chapter 58
31A-9-503, as enacted by Laws of Utah 1985, Chapter 242
31A-11-107, as last amended by Laws of Utah 2003, Chapter 298
31A-15-203, as enacted by Laws of Utah 1992, Chapter 258
31A-15-207, as last amended by Laws of Utah 2003, Chapter 298
31A-15-210, as last amended by Laws of Utah 2003, Chapter 298
31A-17-503, as last amended by Laws of Utah 2008, Chapter 382
31A-17-506, as last amended by Laws of Utah 2010, Chapter 324
31A-17-507, as last amended by Laws of Utah 2001, Chapter 116
31A-17-510, as enacted by Laws of Utah 1993, Chapter 305
31A-17-512, as enacted by Laws of Utah 1993, Chapter 305
31A-18-106, as last amended by Laws of Utah 2008, Chapter 257
31A-19a-206, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-19a-208, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-19a-309, as renumbered and amended by Laws of Utah 1999, Chapter 130
31A-21-101, as last amended by Laws of Utah 2006, Chapter 197
31A-21-312, as last amended by Laws of Utah 1986, Chapter 204

31A-21-313, as last amended by Laws of Utah 2008, Chapter 3
31A-21-403, as last amended by Laws of Utah 2001, Chapter 116
31A-22-305, as last amended by Laws of Utah 2010, Chapter 354
31A-22-408, as last amended by Laws of Utah 1987, Chapter 91
31A-22-610.5, as last amended by Laws of Utah 2010, Chapter 10
31A-22-611, as last amended by Laws of Utah 2006, Chapter 188
31A-22-613.5, as last amended by Laws of Utah 2010, Chapters 68, 149 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 149
31A-22-618.5, as last amended by Laws of Utah 2010, Chapter 68
31A-22-625, as last amended by Laws of Utah 2010, Chapters 10 and 68
31A-22-634, as enacted by Laws of Utah 2003, Chapter 188
31A-22-636, as enacted by Laws of Utah 2009, Chapter 11
31A-22-637, as enacted by Laws of Utah 2009, Chapter 11
31A-22-716, as last amended by Laws of Utah 2005, Chapter 71
31A-22-722.5, as last amended by Laws of Utah 2010, Chapters 10, 149 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 149
31A-22-723, as last amended by Laws of Utah 2010, Chapter 68
31A-22-806, as last amended by Laws of Utah 2001, Chapter 116
31A-22-1406, as enacted by Laws of Utah 1991, Chapter 243
31A-22-1409, as last amended by Laws of Utah 2001, Chapter 116
31A-23a-501, as last amended by Laws of Utah 2010, Chapter 10
31A-23a-602, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-23a-702, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-23a-806, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-27a-202, as enacted by Laws of Utah 2007, Chapter 309
31A-27a-205, as enacted by Laws of Utah 2007, Chapter 309
31A-27a-502, as enacted by Laws of Utah 2007, Chapter 309
31A-27a-701, as enacted by Laws of Utah 2007, Chapter 309
31A-30-107.3, as last amended by Laws of Utah 2007, Chapter 307
31A-30-107.5, as last amended by Laws of Utah 2007, Chapter 307
31A-30-110, as last amended by Laws of Utah 2002, Chapter 308
31A-30-206, as enacted by Laws of Utah 2009, Chapter 12
31A-34-104, as last amended by Laws of Utah 2009, Chapter 183
31A-34-107, as enacted by Laws of Utah 1996, Chapter 143
31A-36-107, as last amended by Laws of Utah 2009, Chapter 355
31A-36-109, as last amended by Laws of Utah 2009, Chapter 355
31A-36-110, as last amended by Laws of Utah 2009, Chapter 355
31A-36-112, as last amended by Laws of Utah 2009, Chapter 355
31A-36-114, as last amended by Laws of Utah 2009, Chapter 355
31A-37-105, as enacted by Laws of Utah 2003, Chapter 251
31A-37-106, as last amended by Laws of Utah 2008, Chapters 302 and 382
31A-37-202, as last amended by Laws of Utah 2009, Chapter 183
31A-37-301, as last amended by Laws of Utah 2004, Chapter 312
31A-37-302, as enacted by Laws of Utah 2003, Chapter 251
31A-37-306, as last amended by Laws of Utah 2004, Chapter 312
31A-37-402, as last amended by Laws of Utah 2008, Chapter 302
31A-37-601, as enacted by Laws of Utah 2004, Chapter 312
31A-37a-205, as enacted by Laws of Utah 2008, Chapter 302
32B-1-407 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-1-505 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-407 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-8-304 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
34-19-1, as enacted by Laws of Utah 1969, Chapter 85
34-19-9, as enacted by Laws of Utah 1969, Chapter 85
34-19-10, as enacted by Laws of Utah 1969, Chapter 85
34-19-13, as enacted by Laws of Utah 1969, Chapter 85
34-20-3, as last amended by Laws of Utah 2010, Chapter 286
34-20-5, as enacted by Laws of Utah 1969, Chapter 85
34-20-8, as enacted by Laws of Utah 1969, Chapter 85
34-23-208, as renumbered and amended by Laws of Utah 1990, Chapter 8
34-25-2, as enacted by Laws of Utah 1969, Chapter 85
34-28-5, as last amended by Laws of Utah 1995, Chapter 17
34-28-6, as enacted by Laws of Utah 1969, Chapter 85
34-28-14, as last amended by Laws of Utah 1996, Chapter 240
34-29-1, as enacted by Laws of Utah 1969, Chapter 85
34-32-4, as last amended by Laws of Utah 2004, Chapter 220

34-34-2, as enacted by Laws of Utah 1969, Chapter 85
34-34-15, as enacted by Laws of Utah 1969, Chapter 85
34-36-3, as enacted by Laws of Utah 1969, Chapter 85
34-41-106, as last amended by Laws of Utah 1997, Chapter 375
34A-1-408, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-1-409, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-2-413, as last amended by Laws of Utah 2010, Chapter 59
34A-2-802, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-3-104, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-6-108, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-6-202, as last amended by Laws of Utah 2008, Chapter 382
34A-6-301, as last amended by Laws of Utah 2008, Chapters 3 and 382
34A-7-102, as last amended by Laws of Utah 2006, Chapter 155
35A-3-106, as renumbered and amended by Laws of Utah 1997, Chapter 174
35A-3-108, as last amended by Laws of Utah 1998, Chapter 188
35A-3-304, as last amended by Laws of Utah 2007, Chapter 81
35A-3-310.5, as enacted by Laws of Utah 2008, Chapter 59
35A-3-503, as renumbered and amended by Laws of Utah 1997, Chapter 174
35A-4-303, as last amended by Laws of Utah 2008, Chapter 110
35A-4-304, as last amended by Laws of Utah 2008, Chapter 382
35A-4-305, as last amended by Laws of Utah 2010, Chapter 278
35A-4-309, as last amended by Laws of Utah 2006, Chapter 22
35A-4-311, as last amended by Laws of Utah 2001, Chapter 265
35A-4-404, as renumbered and amended by Laws of Utah 1996, Chapter 240
35A-4-501, as last amended by Laws of Utah 2010, Chapters 277 and 278
35A-4-506, as last amended by Laws of Utah 2010, Chapters 277 and 278
55-5-2, Utah Code Annotated 1953

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

Section 1. Section 17-3-1 is amended to read:

17-3-1. By petition -- Election -- Ballots.

Whenever any number of the qualified electors of any portion of any county desire to have the territory within which they reside created into a new county they may [~~petition therefor~~] file a petition for the creation of a new county with the county legislative body of the county in which they reside. [~~Such~~] The petition [~~must~~] shall be signed by at least [~~1/4~~] one-fourth of the qualified electors as shown by the registration list of the last preceding general election, residing in that portion of the county to be created into a new county, and by not less than [~~1/4~~] one-fourth of the qualified electors residing in the remaining portion of [~~said~~] the county. [~~Such~~] The petition [~~must~~] shall be presented on or before the first Monday in May of any year, and shall propose the name and define the boundaries of [~~such~~] the new county. The county legislative body [~~must~~] shall cause the proposition to be submitted to the legal voters residing in the county at a special election to be held according to the dates established in Section 20A-1-204, first causing 30 days' notice of [~~such~~] the election to be given in the manner provided by law for giving notice of general elections. [~~Such~~] The election shall be held, the result [~~thereof~~] canvassed, and returns made under the provisions of the general election laws. The form of ballot to be used at such election shall be:

For the creation of (supplying the name proposed) county.

Against the creation of (supplying the name proposed) county.

Section 2. Section 17-3-8 is amended to read:

17-3-8. Prior offenses.

[~~All offenses theretofore committed in such new county in which prosecution shall not have been commenced~~] An offense, for which prosecution has not commenced, that was committed within the boundaries of a new county before the new county was created, may be prosecuted to judgment and execution in [~~such~~] the new county.

Section 3. Section 17-8-7 is amended to read:

17-8-7. Declaration of drought emergency -- Appropriation -- Tax levy.

The county legislative body of each county may at any regular meeting or at a special meeting called for such purpose, declare that an emergency drought exists in said county; and thereupon may appropriate from the money not otherwise appropriated in the county general fund such funds as shall be necessary for the gathering of information upon, and aiding in any program for increased precipitation within said county or in conjunction with any other county or counties, or that if there are not sufficient funds available in the county general fund for such purpose, the county legislative body may, during any such emergency so declared by them, assess, levy, and direct the county to collect annually to aid in any program of increased precipitation. The provisions of Sections 17-19-1 to 17-19-28 relating to budgeting [~~shall~~] do not apply to appropriations necessitated by such an emergency.

Section 4. Section 17-11-2 is amended to read:

17-11-2. Initiating petitions -- Limitation.

Whenever there [~~shall be~~] is presented to the county legislative body of any county a petition

signed by qualified electors of [~~such~~] the county, in number equal to a majority of the votes cast at the preceding general election, praying for the submission of the question of the removal of the county seat, it shall be the duty of the county legislative body to submit the question of [~~such~~] the removal at the next general election to the qualified electors of [~~such~~] the county; and [~~such~~] the election shall be conducted and the returns canvassed in all respects as provided by law for the conducting of general elections and canvassing the returns [~~thereof~~]. A proposition of removal of the county seat [~~shall not~~] may not be submitted in the same county more than once in four years, or within four years [~~from the time that any such proposition has been theretofore~~] after the day on which a proposition of removal of the county seat is submitted.

Section 5. Section 17-15-16 is amended to read:

17-15-16. Warrants -- Payment -- Registration -- Duty of auditor.

Warrants drawn by order of the county executive on the county treasurer for current expenses during each year [~~must~~] shall specify the liability for which they are drawn, when they accrued, and the funds from which they are to be paid, and [~~must~~] shall be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it [~~must~~] shall be registered and [~~thereafter~~] then paid in the order of registration. Accounts for county charges of every description [~~must~~] shall be presented to the auditor and county executive to be audited as prescribed in this title.

Section 6. Section 17-16-4 is amended to read:

17-16-4. Election of officer to consolidated office.

When offices are united and consolidated [~~but~~]:

(1) only one person shall be elected to fill the united and consolidated offices [~~so united and consolidated, and he must~~]; and

(2) the person elected shall:

(a) take the oath and give the bond required for[~~, and~~] each of the offices; and

(b) discharge all the duties pertaining to[~~,~~] each of the offices.

Section 7. Section 17-16-9 is amended to read:

17-16-9. Officers at county seats -- Office hours.

(1) The elected county officers of all counties, except those in counties having a population of less than 8,000, shall have their offices at the county seats.

(2) (a) In all counties the clerk, sheriff, recorder, auditor, treasurer, assessor, and attorney shall keep their offices open for the transaction of business as authorized by resolution of the county legislative body.

(b) If the county legislative body does not authorize hours of operation for Saturdays, then the hours served by the employees of the county [~~shall not~~] may not be less than under their present schedule.

(c) (i) Any act authorized, required, or permitted to be performed at or by, or with respect to, any county office on a Saturday when the county office is closed, may be performed on the next business day.

(ii) No liability or loss of rights of any kind may result from [~~that delay~~] the delay described in Subsection (2)(c)(i).

Section 8. Section 17-16-16 is amended to read:

17-16-16. Commissioners' traveling expenses.

(1) The members of the board of county commissioners [~~shall not~~] may not receive any compensation in addition to that provided in Section 17-16-14 for any special or committee work, but, subject to Subsection (2), each member shall be paid the amount of [~~his~~] the member's actual and reasonable traveling expenses in attending the regular and special sessions of the board and in the discharge of necessary duties[~~; provided, that~~].

(2) Before receiving payment for the actual and reasonable traveling expenses described in Subsection (1), the member shall:

(a) submit an itemized statement [~~shall be made~~] showing in detail the expenses incurred[~~, and shall be subscribed and sworn to by the member claiming such expenses.~~]; and

(b) subscribe and swear to the statement described in Subsection (2)(a).

Section 9. Section 17-16a-3 is amended to read:

17-16a-3. Definitions.

As used in this part:

(1) "Appointed officer" means any person appointed to any statutory office or position or any other person appointed to any position of employment with a county, except special employees. Appointed officers include, but are not limited to persons serving on special, regular or full-time committees, agencies, or boards whether or not such persons are compensated for their services. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the county.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to so assist such person or business entity.

(3) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(4) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other thing whatsoever.

(5) "Elected officer" means any person elected or appointed to any office in the county.

(6) "Governmental action" means any action on the part of a county including[~~, but not limited to~~]:

(a) any decision, determination, finding, ruling, or order; and

(b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.

(7) "Special employee" means any person hired on the basis of a contract to perform a special service for the county pursuant to an award of a contract following a public bid.

(8) "Substantial interest" means the ownership, either legally or equitably, by an individual, [~~his~~] the individual's spouse, and [~~his~~] the individual's minor children, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

Section 10. Section 17-16a-6 is amended to read:

17-16a-6. Interest in business entity regulated by county -- Disclosure.

Every appointed or elected officer who is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the county in which [~~he~~] the officer is an elected or appointed officer shall disclose the position held and the precise nature and value of [~~his~~] the officer's interest upon first becoming appointed or elected, and again during January of each year thereafter during which [~~he~~] the officer continues to be an appointed or elected officer. The disclosure shall be made in a sworn statement filed with the county legislative body. The commission shall report the substance of all such disclosure statements to the members of the governing body or may provide to the members of the governing body, copies of the disclosure statement within 30 days after the statement is received. This section does not apply to instances where the value of the interest does not exceed $2,000, and life insurance policies and annuities [~~shall not~~] may not be considered in determining the value of [~~any such~~] the interest.

Section 11. Section 17-18-1.9 is amended to read:

17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.

(1) The county governing body may create a countywide state prosecution district by ordinance.

(2) (a) Two or more counties, whether or not contiguous, may unite to create and maintain a state prosecution district by interlocal agreement pursuant to Title 11, Chapter 13.

(b) At the time of the creation of the prosecution district, the participating counties shall be located within the same judicial district.

(3) The county governing body or bodies [~~shall not~~] may not dissolve a prosecution district during the term of office of an elected or appointed district attorney.

Section 12. Section 17-19-7 is amended to read:

17-19-7. Current accounts with treasurer.

The auditor [~~must~~] shall keep accounts current with the treasurer.

Section 13. Section 17-19-14 is amended to read:

17-19-14. Duties -- Omnibus provision.

The auditor [~~must~~] shall perform such other duties as may be required by law.

Section 14. Section 17-22-6 is amended to read:

17-22-6. Service of process on prisoners -- Penalty.

(1) A sheriff or jailer upon whom a paper in a judicial proceeding directed to a prisoner in [~~his~~] the sheriff's or jailer's custody is served [~~must~~] shall forthwith deliver [~~it~~] the paper to the prisoner, with a note thereon of the time of its service. [~~For neglect to do so he~~]

(2) A sheriff or jailer who neglects to comply with Subsection (1) is liable to the prisoner for all damages occasioned [~~thereby~~] by that neglect.

Section 15. Section 17-22-21 is amended to read:

17-22-21. Process justifies sheriff's action.

A sheriff is justified in the execution of, and [~~must~~] shall execute, all process, writs and orders regular on their face and issued by competent authority.

Section 16. Section 17-22-22 is amended to read:

17-22-22. Process to be exhibited.

The officer executing process [~~must~~] shall then, and at all times subsequent as long as [~~he~~] the officer retains it, upon request show the same, with all papers attached, to any interested person [~~interested therein~~].

Section 17. Section 17-22-23 is amended to read:

17-22-23. Crier of court.

The sheriff in attendance upon court [~~must~~] shall, if required by the court, act as crier [~~thereof~~] for the court, call the parties and witnesses and other persons bound to appear at the court, and make proclamation of the opening and adjournment of court and of any other matter under its direction.

Section 18. Section 17-22-27 is amended to read:

17-22-27. Sheriff -- Assignment of court bailiffs -- Contract and costs.

(1) The sheriff shall assign law enforcement officers or special function officers, as defined under Sections 53-13-103 and 53-13-105, to serve as court bailiffs and security officers in the courts of record and county justice courts as required by the rules of the Judicial Council.

(2) (a) The state court administrator shall enter into a contract with the county sheriff for bailiffs and building security officers for the district and juvenile courts within the county. The contract [~~shall not~~] may not exceed amounts appropriated by the Legislature for that purpose. The county shall assume costs related to security administration, supervision, travel, equipment, and training of bailiffs.

(b) The contract shall specify the agreed services, costs of services, and terms of payment.

(c) If the court is located in the same facility as a state or local law enforcement agency and the county sheriff's office is not in close proximity to the court, the State Court Administrator in consultation with the sheriff may enter into a contract with the state or local law enforcement agency for bailiff and security services subject to meeting all other requirements of this section. If the services are provided by another agency, the county sheriff shall have no responsibility for the services under this section.

(3) (a) At the request of the court, the sheriff may appoint as a law clerk bailiff graduates of a law school accredited by the American Bar Association to provide security and legal research assistance. Any law clerk who is also a bailiff shall meet the requirements of Subsection (1) of this section.

(b) The sheriff may appoint a law clerk bailiff by contract for a period not to exceed two years, who shall be exempt from the deputy sheriff merit service commission.

Section 19. Section 17-23-16 is amended to read:

17-23-16. Resurveys.

In the resurvey of lands surveyed under the authority of the United States, the county surveyor or [~~his~~] the county surveyor's designee shall observe the following rules:

(1) Section and quarter-section corners, and all other corners established by the government survey, shall stand as the true corner.

(2) Missing corners shall be reestablished at the point where existing evidence would indicate the original corner was located by the government survey.

(3) In all cases, missing corners [~~must~~] shall be reestablished with reference to the United States Manual of Surveying Instructions.

Section 20. Section 17-27a-513 is amended to read:

17-27a-513. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home [~~must~~] shall be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations [~~must~~] shall be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any land use zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants, applicable to a single-family residence within that zone or area.

(3) A county may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

Section 21. Section 17-27a-518 is amended to read:

17-27a-518. Elderly residential facilities in areas zoned exclusively for single-family dwellings.

(1) For purposes of this section:

(a) no person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and

(b) placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any zone that is regulated to permit exclusively single-family dwelling use, if that facility:

(a) conforms to all applicable health, safety, land use, and building codes;

(b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and

(c) conforms to the county's criteria, adopted by ordinance, governing the location of residential

facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.

(3) A county may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for persons with a disability.

(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) County ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.

(b) The decision of a county regarding the application for a permit by a residential facility for elderly persons [~~must~~] shall be based on legitimate land use criteria and may not be based on the age of the facility's residents.

(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing land use ordinances that allow a specified number of unrelated persons to live together.

Section 22. Section 17-28-11 is amended to read:

17-28-11. Temporary work -- Term or period.

[~~The~~] (1) Subject to Subsection (2), the head of any county fire department coming within the provisions of this act may with the advice and consent of the county legislative body, appoint to any position or place of employment in [~~his~~] the fire department, any person for temporary work without making [~~such~~] the appointment from the certified civil service list[~~, provided, however, such~~].

(2) An appointment [~~shall not~~] described in Subsection (1) may not be longer than one month in the aggregate in the same calendar year.

Section 23. Section 17-30-8 is amended to read:

17-30-8. Preservation and inspection of examination papers.

All examination papers shall remain the property of the commission, and shall be preserved until the expiration of the eligible register for the preparation of which an examination is given. Examination papers [~~shall not be~~] are not open to public inspection without court order, but an applicant may inspect [~~his~~] the applicant's own papers at any time within 30 days after the mailing of notice of [~~his~~] the applicant's grade. The appointing authority may inspect the papers of any eligible applicant certified for appointment.

Section 24. Section 17-30-22 is amended to read:

17-30-22. Prohibitions against political activities -- Penalties.

(1) Any employee of a governmental unit or member of a governing body, or appointing authority, or peace officer who shall appoint, promote, transfer, demote, suspend, discharge or change the amount of compensation of any merit system officer or seek, aid or abet the appointment, promotion, transfer, demotion, suspension, discharge or change in the amount of compensation of any merit system officer, or promise or threaten to do so, for giving, withholding, or neglecting to make any contributions or any service for any political purpose, or who solicits, directly or indirectly, any such contribution or service, from a merit system officer, shall be guilty of a misdemeanor. This section [~~shall not be deemed to~~] does not apply to political speeches or use of mass communications media for political purposes by persons not merit system officers even though merit system officers may be present or within the reach of such media unless the purpose and intent [~~thereof~~] is to violate this section with direct respect to [~~such~~] those officers.

(2) No merit system officer may engage in any political activity during the hours of employment, nor shall any person solicit political contributions from merit system officers during hours of employment for political purposes; but nothing in this section shall preclude voluntary contributions by a merit system officer to the party or candidate of the officer's choice.

Section 25. Section 17-31-3 is amended to read:

17-31-3. Reserve fund authorized -- Use of collected funds.

The county legislative body may create a reserve fund and any funds collected but not expended during any fiscal year [~~shall not~~] do not revert to the general fund of the governing bodies but shall be retained in a special fund to be used in accordance with Sections 17-31-2 through 17-31-5.

Section 26. Section 17-33-10 is amended to read:

17-33-10. Grievance and appeals procedure -- Employees' complaints of discriminatory employment practice.

(1) Any county to which the provisions of this act apply shall establish in its personnel rules and regulations a grievance and appeals procedure. The procedure shall be used to resolve disputes arising from grievances as defined in the rules and regulations, including [~~but not limited to~~] acts of discrimination. The procedure may also be used by employees in the event of dismissal, demotion, suspension, or transfer.

(2) Any charge by a county career service employee of discriminatory or prohibited employment practice as prohibited by Section 34A-5-106, can be filed with the Division of

Antidiscrimination and Labor within the Labor Commission. Complaints shall be filed within 30 days of the issuance of a written decision of the county career service council.

Section 27. Section 17-33-15 is amended to read:

17-33-15. Duty of county legislative body to provide rules or regulations -- Conflicts with state or federal law.

(1) It shall be the duty of the county legislative body to provide by rule or regulation for the operation and functioning of any activity within the purpose and spirit of the act which is necessary and expedient.

(2) If any provision of this act or the application thereof is found to be in conflict with any state or federal law, conflict with which would impair funding otherwise receivable from the state or federal government, the conflicting part is hereby declared to be inoperative solely to the extent of the conflict and with respect to the department, agency, or institution of the county directly affected, but such finding [~~shall not~~] does not affect the operation of the remainder of this act in any of its applications.

(3) Notwithstanding any provision to the contrary, no rule or regulation shall be adopted by the county legislative body which would deprive the county or any of its departments, agencies, or institutions of state or federal grants or other forms of financial assistance.

Section 28. Section 17-34-5 is amended to read:

17-34-5. Budgeting, accounting for, and disbursing of funds -- Annual audit.

(1) (a) With respect to the budgeting, accounting for, and disbursing of funds to furnish the municipal-type services and functions described in Section 17-34-1 to areas of the county outside the limits of incorporated towns and cities, including levying of taxes and imposition of fees and charges under Section 17-34-3, each county legislative body shall separately budget and strictly account for and apportion to the costs of providing municipal-type services and functions the following:

(i) the salaries of each county commissioner and the salaries and wages of all other elected and appointed county officials and employees;

(ii) the operation and maintenance costs of each municipal-type service or function provided, set forth separately as line items in the Municipal Services Fund budget;

(iii) the cost of renting or otherwise using capital facilities for the purposes of providing municipal-type services or functions; and

(iv) all other costs including[~~, but not limited to,~~] administrative costs associated, directly or indirectly, with the costs of providing municipal-type services or functions.

(b) At all times these funds and any expenditures from these funds shall be separately accounted for and utilized only for the purposes of providing municipal-type services and functions to areas of the county outside the limits of incorporated towns or cities.

(2) To implement Subsection (1):

(a) a budget shall be adopted and administered in the same manner as the budget for general purposes of the county which furnishes the municipal-type services and functions is adopted and administered, either as a part of the general budget or separate from it;

(b) funds for the purposes of furnishing municipal-type services and functions under this chapter shall be collected, held, and administered in the same manner as other funds of the county are collected, held, and administered, but shall be segregated and separately maintained, except that where, in the judgment of the county legislative body, advantages inure to the fund from coinvestment of these funds and other funds also subject to control by the county legislative body, the county legislative body may direct this coinvestment, but in no event may the funds to furnish municipal-type services and functions or the income from their investment be used for purposes other than those described in Section 17-34-1;

(c) expenditures shall be made in the same manner as other expenditures of the county are made; and

(d) any taxes levied under this chapter shall be levied at the same time and in the same manner as other taxes of the county are levied.

(3) An annual audit of the budgeting, accounting for, and disbursing of funds used to furnish municipal-type services and functions, shall be conducted by an independent certified public accountant.

Section 29. Section 17-35b-303 is amended to read:

17-35b-303. Community council form of county government.

(1) The structural form of county government known as the "community council" form unites in a single consolidated city and county government the powers, duties, and functions which, immediately prior to its effective date, are vested in the county, the largest city in the county, such other cities and towns as elect to merge in it, and all special taxing districts, public authorities, service areas, and other local public entities functioning within the boundaries of the county, except school districts. The consolidated government shall have power to extend on a countywide basis any governmental service or function which is authorized by law or which the previous county, cities, and other local public agencies included therein were empowered to provide for their residents, but no such service shall be provided within an incorporated municipality which continues to provide that service for its own inhabitants, except upon a

contract basis for the municipality, and no taxes, assessments, fees, or other charges shall be extended or collected within the municipality for the purpose of financing any service which is not provided by the consolidated government within the municipality. "Largest city," as used in this section, means a city or cities the population of which, as shown by the most recent decennial or special census, exceeds 35% of the total county population.

(2) The incorporated cities and towns, other than the largest city, in the county shall retain independent corporate existence and shall continue to provide local services to their inhabitants of the type and to the extent provided in the plan, but any such city or town, by majority vote of its qualified voters, cast either concurrently with the election at which the plan is approved or subsequently to it, as provided by the governing body of the city or town, may cause the city or town to be dissolved and its powers, duties, and functions vested in the countywide government.

(3) The county legislative body of the countywide government shall be a council composed of not less than five persons as specified in the plan, elected respectively from communities, which collectively include all of the territory within the county, having boundaries described in the plan embracing substantially equal populations. In addition to other powers vested in the countywide government by law or pursuant to this act, the county council shall have all of the legislative and policymaking powers which it is possible for the governing body of a county or a city to possess and which are not expressly denied by the constitution, by a general law applicable to all cities or all counties, or by a specific restriction in the plan itself.

(4) The voters of each community shall elect a community council composed of the community's elected member of the county council, who shall be chairman of the community council, and not less than two nor more than four additional members elected either from districts of substantially equal population within the community, or at large therein, as may be provided in the plan. A community council shall have the power and duty, in conformity with guidelines prescribed by the county council, to adopt policies and formulate specific programs relating to and defining the kinds and levels of local governmental services necessary to satisfy the needs and desires of the citizens within the community, but a community council shall have no power to engage personnel or to acquire facilities, property, or equipment for the administration or performance of such services. Authorized programs for local governmental services which have been approved by a community council shall be submitted to the county council for implementation and shall be carried into effect by the county council and county executive unless, by a vote of not less than 3/4 of its entire membership, the county council determines that a particular program, in whole or in part, should be rejected as contrary to the general welfare of the county. A community council program for local governmental services within a community:

(a) shall include a method or methods for financing such services;

(b) may provide for supplying of such services by contract or by joint or cooperative action pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, in which case the community council shall be considered a "public agency" within the meaning of said act; and

(c) may provide for supplying of such services through the creation of service areas pursuant to Title 17B, Chapter 2a, Part 9, Service Area Act.

(5) Notwithstanding Subsection (4), in any community which includes, in whole or in part, the territory of a city or town, no community council program for local government services above the minimum level of area-wide services provided countywide may be submitted to the county council for implementation unless it first is submitted to the governing body of each such city or town for review. Within 30 days after such submission, the governing body of the city or town:

(a) may file with the community council a written statement of its comments, suggestions, and recommendations relating to the program, and the community council shall give due consideration thereto; or

(b) may, by resolution or ordinance, provide that any designated part of the community council program relating to a service to be provided within the city or town shall be submitted to the voters thereof at a general or special election to be held therein within 60 days after the date of the resolution or ordinance. Any part of the program submitted to the voters of a city or town under this Subsection (5) [~~shall not~~] may not be included in the program as submitted to the county council unless it receives an approving vote at such election by majority of all votes cast on the question.

(6) Except as provided herein, the qualifications, mode of election, term of office, method of removal, procedure to fill vacancies, compensation, and other appropriate provisions relating to membership on the county council or community councils shall be provided in the plan.

(7) Upon the effective date of the plan and as provided in it, all properties and assets, whether tangible or intangible, and all obligations, debts, and liabilities, of those governmental entities which are merged into the new countywide government shall become vested and transferred by operation of law in and to the new countywide government. The properties, assets, obligations, debts, and liabilities of any city or town not merged into the new countywide government, so far as allocated, used, or incurred primarily to discharge a function which under the plan will no longer be a responsibility of the city or town, shall likewise be vested in and transferred to the new countywide government. All transfers under this Subsection (7) shall be subject to equitable adjustments, conditions, and limitations provided in the plan and determined by procedures specified in the plan, but the contractual rights of any bondholder or creditor [~~shall not~~] may not be impaired.

(8) Upon the effective date of the plan and as provided in it, nonelective officers and employees of governmental entities which are merged into the new countywide government and such officers and employees of nonmerged cities or towns whose qualifications and duties relate primarily to functions which under the plan will no longer be a responsibility of those cities or towns, shall be blanketed in and transferred to the new countywide government as officers and employees of it. Standards and procedures relating to such personnel transfers, and for resolving disputes or grievances relating thereto, shall be provided in the plan.

Section 30. Section 17-35b-304 is amended to read:

17-35b-304. Consolidated city and county -- Structural form.

(1) The structural form of county government known as the "consolidated city and county" form unites in a single consolidated city and county government the powers, duties, and functions which, immediately prior to its effective date, are vested in the county, the largest city in the county, such other cities and towns as elect to merge in it, and all special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county, except school districts. The consolidated government shall with the consent of the continuing municipalities have power to extend on a countywide basis any governmental service or function which is authorized by law or which the previous county, cities, and other local public agencies included in them were empowered to provide for their residents. No such service, however, shall be provided within an incorporated municipality which continues to provide that such service for its own inhabitants, except upon a contract basis for the municipality. No taxes, assessments, fees, or other charges shall be extended or collected by the consolidated government within any municipality for the purpose of financing any service which is not provided by the consolidated government within the municipality. "Largest city," as used in this section, means a city or cities the population of which, as shown by the most recent decennial or special census, exceeds 35% of the total county population.

(2) The incorporated cities and towns, other than the largest city in the county, shall retain independent corporate existence and shall continue to provide local services to their inhabitants of the type and to the extent provided in the plan; but any such city or town by majority vote of its qualified voters cast either concurrently with the election at which the plan is approved or subsequently to it, as provided by the governing body of the city or town, may cause the city or town to be dissolved and its powers, duties, and functions vested in the consolidated government.

(3) The governing body of the consolidated government shall be a council composed of not less than five persons elected as specified in the plan. In addition to other powers vested in the consolidated government by law or pursuant to this act, the county council shall have all the legislative and policymaking powers which it is possible for the governing body of a county or a city to possess and which are not expressly denied by the constitution, by general law applicable to all cities or all counties, or by a specific restriction in the plan itself.

(4) Except as provided in this act, the qualifications, mode of election, term of office, method of removal, procedure to fill vacancies, compensation, or other appropriate provisions relating to membership on the county council shall be provided in the plan.

(5) Upon the effective date of the plan, as provided in it, all properties and assets, whether tangible or intangible, and all obligations, debts, and liabilities of those governmental entities which are merged into the consolidated government shall become vested and transferred by operation of law in and to the consolidated government. The properties, assets, obligations, debts, and liabilities of any city or town not merged into the consolidated government, so far as allocated, used, or incurred primarily to discharge a function which under the plan will no longer be a responsibility of the city or town, shall likewise be vested in and transferred to the consolidated government. All transfers under this Subsection (5) shall be subject to equitable adjustments, conditions, and limitations provided in the plan and determined by procedures specified in the plan, but the contractual rights of any bondholder or creditor [~~shall not~~] may not be impaired.

(6) Upon the effective date of the plan, and as provided in it, nonelective officers and employees of the governmental entities which are merged into the consolidated government and such officers and employees of nonmerged cities or towns whose qualifications and duties relate primarily to functions which under the plan will no longer be a responsibility of those cities or towns shall be blanketed in and transferred to the consolidated government as officers and employees of it. Standards and procedures relating to such personnel transfers and for resolving disputes or grievances relating to them shall be provided in the plan.

Section 31. Section 17-36-10 is amended to read:

17-36-10. Preparation of tentative budget.

(1) On or before the first day of the next to last month of every fiscal period, the budget officer shall prepare for the next budget period and file with the governing body a tentative budget for each fund for which a budget is required.

(2) The tentative budget shall set forth in tabular form:

(a) actual revenues and expenditures in the last completed fiscal period;

(b) estimated total revenues and expenditures for the current fiscal period;

(c) the estimated available revenues and expenditures for the ensuing budget period computed by determining:

(i) the estimated expenditure for each fund after review of each departmental budget request;

(ii) (A) the total revenue requirements of the fund;

(B) the part of the total revenue that will be derived from revenue sources other than property tax; and

(C) the part of the total revenue that [~~must~~] shall be derived from property taxes; and

(d) if required by the governing body, actual performance experience to the extent available in work units, unit costs, man hours, and man years for each budgeted fund that includes an appropriation for salaries or wages for the last completed fiscal period and the first eight months of the current fiscal period if the county is on an annual fiscal period, or the first 20 months of the current fiscal period if the county is on a biennial fiscal period, together with the total estimated performance data of like character for the current fiscal period and for the ensuing budget period.

(3) The budget officer may recommend modification of any departmental budget request under Subsection (2)(c)(i) before it is filed with the governing body, if each department head has been given an opportunity to be heard concerning the modification.

(4) Each tentative budget shall contain the estimates of expenditures submitted by any department together with specific work programs and other supportive data as the governing body requests. The tentative budget shall be accompanied by a supplementary estimate of all capital projects or planned capital projects within the budget period and within the next three succeeding years.

(5) (a) Each tentative budget submitted in a county with a population in excess of 25,000 determined pursuant to Section 17-36-4 shall be accompanied by a budget message in explanation of the budget.

(b) The budget message shall contain an outline of the proposed financial policies of the county for the budget period and describe the important features of the budgetary plan. It shall also state the reasons for changes from the previous fiscal period in appropriation and revenue items and explain any major changes in financial policy.

(c) A budget message for counties with a population of less than 25,000 is recommended but not incumbent upon the budget officer.

(6) The tentative budget shall be reviewed, considered, and tentatively adopted by the governing body in a regular or special meeting called for that purpose. It may thereafter be amended or revised by the governing body prior to public hearings thereon, except that no appropriation required for debt retirement and interest or reduction, pursuant to Section 17-36-17, of any deficits which exist may be reduced below the required minimum.

Section 32. Section 17-36-17 is amended to read:

17-36-17. Appropriations in final budget -- Limitations.

(1) The governing body of a county [~~shall not~~] may not make any appropriation in the final budget of any fund in excess of the estimated expendable revenue of the fund for the budget period.

(2) There shall be included as an item of appropriation in the budget of each fund for any fiscal period any existing deficit as of the close of the last completed fiscal period to the extent of at least 5% of the total revenue of the fund in the last completed fiscal period or if the deficit is less than 5% of the total revenue, an amount equal to the deficit.

Section 33. Section 17-37-4 is amended to read:

17-37-4. Delegation of management and control authority to directors by county executive body -- Contract or lease with private entity for management -- Deposit of money collected -- Expenditures -- Recommendations by directors to county executive body.

(1) Upon the appointment of a planetarium board of directors, the county executive may delegate to the board of directors the authority to manage and control the functions, activities, operations, maintenance, and repair of any county planetarium, and shall include in its delegation the authority to approve and control all expenditures from the county planetarium fund. Any delegation of authority made to the board of directors under this section shall at all times be subject to the ultimate authority and responsibility of the county executive for the management and control of all county funds and properties as conferred upon that board by general law applicable to counties.

(2) (a) Upon the recommendation of the board of directors, the county may enter into a contract or lease agreement with a private organization or entity for partial or full management, operation and maintenance of any county planetarium and for other planetarium services, which may include providing the physical facilities and equipment for the operation of a planetarium.

(b) A contract or lease for [~~such~~] the purposes [~~shall not~~] described in Subsection (2)(a) may not extend for more than a four-year period and shall be subject to annual review by the board of directors to determine if performance is in conformance with the terms of the contract or lease and to establish the level of the subsequent funding pursuant to the contract or lease.

(3) All money collected from a county planetarium tax levy shall be deposited in the county treasury to the credit of the county planetarium fund. All money collected from operations of or from donations to any planetarium owned and operated by the county shall also be

deposited in the county treasury to the credit of the planetarium fund. Any money collected from operations of a planetarium by a contracting party or lessee shall be used or deposited as the contract or lease may provide. Income or proceeds from any investment by the county treasurer of county planetarium funds shall be credited to the county planetarium fund and used only for planetarium purposes.

(4) Expenditures from the county planetarium fund shall be drawn upon by the authorized officers of the county upon presentation of properly authenticated vouchers or documentation of the board of directors or other appropriate planetarium official. The fund [~~shall not~~] may not be used for any purpose other than to pay the costs of acquiring, constructing, operating, managing, equipping, furnishing, maintaining or repairing a planetarium, including appropriate, reasonable and proportionate costs allocated by the county for support of the planetarium, or to pay the cost of financing and funding a contract or lease agreement for facilities, equipment, management, operation, and maintenance of a planetarium.

(5) The board of directors shall provide recommendations to the county executive with respect to the purchase, lease, exchange, construction, erection, or other acquisition of land, real property improvements, and fixtures or the sale, lease, exchange, or other disposition of land, real property improvements, and fixtures for the use or benefit of a county planetarium.

Section 34. Section 17-38-4 is amended to read:

17-38-4. Nontermination of taxing power.

The power to levy a tax as provided in Section 17-38-1 [~~shall~~] does not terminate on June 30, 1983.

Section 35. Section 17-41-301 is amended to read:

17-41-301. Proposal for creation of agriculture protection area or industrial protection area.

(1) (a) A proposal to create an agriculture protection area or an industrial protection area may be filed with:

(i) the legislative body of the county in which the area is located, if the area is within the unincorporated part of a county; or

(ii) the legislative body of the city or town in which the area is located, if the area is within a city or town.

(b) (i) To be accepted for processing by the applicable legislative body, a proposal under Subsection (1)(a) shall be signed by a majority in number of all owners of real property and the owners of a majority of the land area in agricultural production or industrial use within the proposed agriculture protection area or industrial protection area, respectively.

(ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be determined by the records of the county recorder.

(2) The proposal shall identify:

(a) the boundaries of the land proposed to become part of an agriculture protection area or industrial protection area;

(b) any limits on the types of agriculture production or industrial use to be allowed within the agriculture protection area or industrial protection area, respectively; and

(c) for each parcel of land:

(i) the names of the owners of record of the land proposed to be included within the agriculture protection area or industrial protection area;

(ii) the tax parcel number or account number identifying each parcel; and

(iii) the number of acres of each parcel.

(3) An agriculture protection area or industrial protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case of an industrial protection area, nonindustrial use if that land constitutes a minority of the total acreage within the agriculture protection area or industrial protection area, respectively.

(4) A county or municipal legislative body may establish:

(a) the manner and form for submission of proposals; and

(b) reasonable fees for accepting and processing the proposal.

(5) Each county and municipal legislative body shall establish the minimum number of continuous acres that [~~must~~] shall be included in an agriculture protection area or industrial protection area.

Section 36. Section 17-41-401 is amended to read:

17-41-401. Farmland Assessment Act benefits not affected.

(1) Creation of an agriculture protection area [~~shall not~~] may not impair the ability of land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act.

(2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding the land's location within an agriculture protection area.

Section 37. Section 17-52-401 is amended to read:

17-52-401. Contents of proposed optional plan.

(1) Each optional plan proposed under this chapter:

(a) shall propose the adoption of one of the forms of county government listed in Subsection 17-52-402(1)(a);

(b) shall contain detailed provisions relating to the transition from the existing form of county government to the form proposed in the optional plan, including provisions relating to the:

(i) election or appointment of officers specified in the optional plan for the new form of county government;

(ii) retention, elimination, or combining of existing offices and, if an office is eliminated, the division or department of county government responsible for performing the duties of the eliminated office;

(iii) continuity of existing ordinances and regulations;

(iv) continuation of pending legislative, administrative, or judicial proceedings;

(v) making of interim and temporary appointments; and

(vi) preparation, approval, and adjustment of necessary budget appropriations;

(c) shall specify the date it is to become effective if adopted, which [~~shall not~~] may not be earlier than the first day of January next following the election of officers under the new plan; and

(d) notwithstanding any other provision of this title and except with respect to an optional plan that proposes the adoption of the county commission or expanded county commission form of government, with respect to the county budget:

(i) may provide that the county auditor's role is to be the budget officer, to project county revenues, and to prepare a tentative budget to present to the county executive; and

(ii) shall provide that the county executive's role is to prepare and present a proposed budget to the county legislative body, and the county legislative body's role is to adopt a final budget.

(2) Subject to Subsection (3), an optional plan may include provisions that are considered necessary or advisable to the effective operation of the proposed optional plan.

(3) An optional plan may not include any provision that is inconsistent with or prohibited by the Utah Constitution or any statute.

(4) Each optional plan proposing to change the form of government to a form under Section 17-52-504 or 17-52-505 shall:

(a) provide for the same executive and legislative officers as are specified in the applicable section for the form of government being proposed by the optional plan;

(b) provide for the election of the county council;

(c) specify the number of county council members, which shall be an odd number from three to nine;

(d) specify whether the members of the county council are to be elected from districts, at large, or by a combination of at large and by district;

(e) specify county council members' qualifications and terms and whether the terms are to be staggered;

(f) contain procedures for filling vacancies on the county council, consistent with the provisions of Section 20A-1-508; and

(g) state the initial compensation, if any, of county council members and procedures for prescribing and changing compensation.

(5) Each optional plan proposing to change the form of government to the county commission form under Section 17-52-501 or the expanded county commission form under Section 17-52-502 shall specify:

(a) (i) for the county commission form of government, that the county commission shall have three members; or

(ii) for the expanded county commission form of government, whether the county commission shall have five or seven members;

(b) the terms of office for county commission members and whether the terms are to be staggered;

(c) whether members of the county commission are to be elected from districts, at large, or by a combination of at large and from districts; and

(d) if any members of the county commission are to be elected from districts, the district residency requirements for those commission members.

Section 38. Section 17-53-209 is amended to read:

17-53-209. Records to be kept.

The legislative body of each county shall cause to be kept:

(1) a minute record, in which [~~must~~] shall be recorded all orders and decisions made by the county legislative body and the daily proceedings had at all regular and special meetings;

(2) an allowance record, in which [~~must~~] shall be recorded all orders for the allowance of money from the county treasury, to whom made and on what account, dating, numbering, and indexing the same through each year;

(3) a road record, containing all proceedings and adjudications relating to the establishment, maintenance, charge, and discontinuance of roads and road districts, and all contracts and other matters pertaining thereto;

(4) a franchise record, containing all franchises granted by the board, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required or other consideration to be paid;

(5) an ordinance record, in which [~~must~~] shall be entered all ordinances or laws duly passed by the county legislative body; and

(6) a warrant record, to be kept by the county auditor, in which [~~must~~] shall be entered in the

order of drawing all warrants drawn on the treasurer, with their number and reference to the order on the minute record, with date, amount, on what account, and the name of the payee.

Section 39. Section 17-53-311 is amended to read:

17-53-311. Contracting for management, maintenance, operation, or construction of jails.

(1) (a) With the approval of the sheriff, a county executive may contract with private contractors for management, maintenance, operation, and construction of county jails.

(b) A county executive may include a provision in the contract that allows use of a building authority created under the provisions of Title 17D, Chapter 2, Local Building Authority Act, to construct or acquire a jail facility.

(c) A county executive may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If a county executive contracts only for the management, maintenance, or operation of a jail, the county executive shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the county legislative body;

(b) establish training standards that [~~must~~] shall be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the county for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the county;

(e) require the private contractor to show evidence of liability insurance protecting the county and its officers, employees, and agents from liability arising from the construction, operation, or maintenance of the jail, in an amount not less than those specified in Title 63G, Chapter 7, Governmental Immunity Act of Utah;

(f) require the private contractor to:

(i) receive all prisoners committed to the jail by competent authority; and

(ii) provide them with necessary food, clothing, and bedding in the manner prescribed by the governing body; and

(g) prohibit the use of inmates by the private contractor for private business purposes of any kind.

(3) A contractual provision requiring the private contractor to maintain liability insurance in an amount not less than the liability limits established by Title 63G, Chapter 7, Governmental Immunity Act of Utah, may not be construed as waiving the limitation on damages recoverable from a governmental entity or its employees established by that chapter.

Section 40. Section 17B-1-304 is amended to read:

17B-1-304. Appointment procedures for appointed members.

(1) The appointing authority may, by resolution, appoint persons to serve as members of a local district board by following the procedures established by this section.

(2) (a) In any calendar year when appointment of a new local district board member is required, the appointing authority shall prepare a notice of vacancy that contains:

(i) the positions that are vacant that [~~must~~] shall be filled by appointment;

(ii) the qualifications required to be appointed to those positions;

(iii) the procedures for appointment that the governing body will follow in making those appointments; and

(iv) the person to be contacted and any deadlines that a person [~~must~~] shall meet who wishes to be considered for appointment to those positions.

(b) The appointing authority shall:

(i) post the notice of vacancy in four public places within the local district at least one month before the deadline for accepting nominees for appointment; and

(ii) (A) publish the notice of vacancy:

(I) in a daily newspaper of general circulation within the local district for five consecutive days before the deadline for accepting nominees for appointment; or

(II) in a local weekly newspaper circulated within the local district in the week before the deadline for accepting nominees for appointment; and

(B) in accordance with Section 45-1-101 for five days before the deadline for accepting nominees for appointment.

(c) The appointing authority may bill the local district for the cost of preparing, printing, and publishing the notice.

(3) (a) Not sooner than two months after the appointing authority is notified of the vacancy, the appointing authority shall select a person to fill the vacancy from the applicants who meet the qualifications established by law.

(b) The appointing authority shall:

(i) comply with Title 52, Chapter 4, Open and Public Meetings Act, in making the appointment;

(ii) allow any interested persons to be heard; and

(iii) adopt a resolution appointing a person to the local district board.

(c) If no candidate for appointment to fill the vacancy receives a majority vote of the appointing authority, the appointing authority shall select the appointee from the two top candidates by lot.

(4) Persons appointed to serve as members of the local district board serve four-year terms, but may be removed for cause at any time after a hearing by 2/3 vote of the appointing body.

(5) At the end of each board member's term, the position is considered vacant and the appointing authority may either reappoint the old board member or appoint a new member after following the appointment procedures established in this section.

(6) Notwithstanding any other provision of this section, if the appointing authority appoints one of its own members, it need not comply with the provisions of this section.

Section 41. Section 17B-1-506 is amended to read:

17B-1-506. Withdrawal petition requirements.

(1) Each petition under Section 17B-1-504 shall:

(a) indicate the typed or printed name and current address of each owner of acre-feet of water, property owner, registered voter, or authorized representative of the governing body signing the petition;

(b) separately group signatures by municipality and, in the case of unincorporated areas, by county;

(c) if it is a petition signed by the owners of land, the assessment of which is based on acre-feet of water, indicate the address of the property and the property tax identification parcel number of the property as to which the owner is signing the request;

(d) designate up to three signers of the petition as sponsors, or in the case of a petition filed under Subsection 17B-1-504(1)(a)(iv), designate a governmental representative as a sponsor, and in each case, designate one sponsor as the contact sponsor with the mailing address and telephone number of each;

(e) state the reasons for withdrawal; and

(f) when the petition is filed with the local district board of trustees, be accompanied by a map generally depicting the boundaries of the area proposed to be withdrawn and a legal description of the area proposed to be withdrawn.

(2) (a) The local district may prepare an itemized list of expenses, other than attorney expenses, that will necessarily be incurred by the local district in the withdrawal proceeding. The itemized list of expenses may be submitted to the contact sponsor. If the list of expenses is submitted to the contact sponsor within 21 days after receipt of the petition, the contact sponsor on behalf of the petitioners shall be required to pay the expenses to the local district within 90 days of receipt. Until funds to cover the expenses are delivered to the local district, the district will have no obligation to proceed with the withdrawal and the time limits on the district stated in this part will be tolled. If the expenses are not paid within the 90 days, or within 90 days from the conclusion of any arbitration under Subsection (2)(b), the petition requesting the withdrawal shall be considered to have been withdrawn.

(b) If there is no agreement between the board of trustees of the local district and the contact sponsor on the amount of expenses that will necessarily be incurred by the local district in the withdrawal proceeding, either the board of trustees or the contact sponsor may submit the matter to binding arbitration in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act; provided that, if the parties cannot agree upon an arbitrator and the rules and procedures that will control the arbitration, either party may pursue arbitration under Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(3) A signer of a petition may withdraw or, once withdrawn, reinstate the signer's signature at any time before the public hearing under Section 17B-1-508 by submitting a written withdrawal or reinstatement with the board of trustees of the local district in which the area proposed to be withdrawn is located.

(4) If it reasonably appears that, if the withdrawal which is the subject of a petition filed under Subsection 17B-1-504(1)(a)(i) or (ii) is granted, it will be necessary for a municipality to provide to the withdrawn area the service previously supplied by the local district, the board of trustees of the local district may, within 21 days after receiving the petition, notify the contact sponsor in writing that, before it will be considered by the board of trustees, the petition [~~must~~] shall be presented to and approved by the governing body of the municipality as provided in Subsection 17B-1-504(1)(a)(iv) before it will be considered by the local district board of trustees. If the notice is timely given to the contact sponsor, the petition shall be considered to have been withdrawn until the municipality files a petition with the local district under Subsection 17B-1-504(1)(a)(iv).

(5) (a) After receiving the notice required by Subsection 17B-1-504(2), unless specifically allowed by law, a public entity may not make expenditures from public funds to support or oppose the gathering of signatures on a petition for withdrawal.

(b) Nothing in this section prohibits a public entity from providing factual information and analysis regarding a withdrawal petition to the public, so long as the information grants equal access to both the opponents and proponents of the petition for withdrawal.

(c) Nothing in this section prohibits a public official from speaking, campaigning, contributing personal money, or otherwise exercising the public official's constitutional rights.

Section 42. Section 17B-1-510 is amended to read:

17B-1-510. Resolution approving or rejecting withdrawal -- Criteria for approval or rejection -- Terms and conditions.

(1) (a) On or before the date of the board meeting next following the public hearing under Section 17B-1-508, but in no case later than 90 days after the public hearing or, if no hearing is held, within 90 days after the filing of a petition under Section 17B-1-504, the board of trustees of the local district in which the area proposed to be withdrawn is located shall adopt a resolution:

(i) approving the withdrawal of some or all of the area from the local district; or

(ii) rejecting the withdrawal.

(b) Each resolution approving a withdrawal shall:

(i) include a legal description of the area proposed to be withdrawn;

(ii) state the effective date of the withdrawal; and

(iii) set forth the terms and conditions under Subsection (5), if any, of the withdrawal.

(c) Each resolution rejecting a withdrawal shall include a detailed explanation of the board of trustees' reasons for the rejection.

(2) Unless denial of the petition is required under Subsection (3), the board of trustees shall adopt a resolution approving the withdrawal of some or all of the area from the local district if the board of trustees determines that:

(a) the area to be withdrawn does not and will not require the service that the local district provides;

(b) the local district will not be able to provide service to the area to be withdrawn for the reasonably foreseeable future; or

(c) the area to be withdrawn has obtained the same service that is provided by the local district or a commitment to provide the same service that is provided by the local district from another source.

(3) The board of trustees shall adopt a resolution denying the withdrawal if it determines that the proposed withdrawal would:

(a) result in a breach or default by the local district under:

(i) any of its notes, bonds, or other debt or revenue obligations;

(ii) any of its agreements with entities which have insured, guaranteed, or otherwise credit-enhanced any debt or revenue obligations of the local district; or

(iii) any of its agreements with the United States or any agency of the United States; provided, however, that, if the local district has entered into an agreement with the United States that requires the consent of the United States for a withdrawal of territory from the district, a withdrawal under this part may occur if the written consent of the United States is obtained and filed with the board of trustees;

(b) adversely affect the ability of the local district to make any payments or perform any other material obligations under:

(i) any of its agreements with the United States or any agency of the United States;

(ii) any of its notes, bonds, or other debt or revenue obligations; or

(iii) any of its agreements with entities which have insured, guaranteed, or otherwise credit-enhanced any debt or revenue obligations of the local district;

(c) result in the reduction or withdrawal of any rating on an outstanding note, bond, or other debt or revenue obligation of the local district;

(d) create an island or peninsula of nondistrict territory within the local district or of district territory within nondistrict territory that has a material adverse affect on the local district's ability to provide service or materially increases the cost of providing service to the remainder of the local district;

(e) materially impair the operations of the remaining local district; or

(f) require the local district to materially increase the fees it charges or property taxes or other taxes it levies in order to provide to the remainder of the district the same level and quality of service that was provided before the withdrawal.

(4) In determining whether the withdrawal would have any of the results described in Subsection (3), the board of trustees may consider the cumulative impact that multiple withdrawals over a specified period of time would have on the local district.

(5) (a) Despite the presence of one or more of the conditions listed in Subsection (3), the board of trustees may approve a resolution withdrawing an area from the local district imposing terms or conditions that mitigate or eliminate the conditions listed in Subsection (3), including:

(i) a requirement that the owners of property located within the area proposed to be withdrawn or residents within that area pay their proportionate share of any outstanding district bond or other obligation as determined pursuant to Subsection (5)(b);

(ii) a requirement that the owners of property located within the area proposed to be withdrawn or residents within that area make one or more payments in lieu of taxes, fees, or assessments;

(iii) a requirement that the board of trustees and the receiving entity agree to reasonable payment and other terms in accordance with Subsections (5)(f) through (g) regarding the transfer to the receiving entity of district assets that the district used before withdrawal to provide service to the withdrawn area but no longer needs because of the

withdrawal; provided that, if those district assets are allocated in accordance with Subsections (5)(f) through (g), the district shall immediately transfer to the receiving entity on the effective date of the withdrawal, all title to and possession of district assets allocated to the receiving entity; or

(iv) any other reasonable requirement considered to be necessary by the board of trustees.

(b) Other than as provided for in Subsection 17B-1-511(2), and except as provided in Subsection (5)(e), in determining the proportionate share of outstanding bonded indebtedness or other obligations under Subsection (5)(a)(i) and for purposes of determining the allocation and transfer of district assets under Subsection (5)(a)(iii), the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition shall:

(i) engage engineering and accounting consultants chosen by the procedure provided in Subsection (5)(d); provided however, that if the withdrawn area is not receiving service, an engineering consultant need not be engaged; and

(ii) require the engineering and accounting consultants engaged under Subsection (5)(b)(i) to communicate in writing to the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition the information required by Subsections (5)(f) through (h).

(c) For purposes of this Subsection (5):

(i) "accounting consultant" means a certified public accountant or a firm of certified public accountants with the expertise necessary to make the determinations required under Subsection (5)(h); and

(ii) "engineering consultant" means a person or firm that has the expertise in the engineering aspects of the type of system by which the withdrawn area is receiving service that is necessary to make the determination required under Subsections (5)(f) and (g).

(d) (i) Unless the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition agree on an engineering consultant and an accounting consultant, each consultant shall be chosen from a list of consultants provided by the Consulting Engineers Council of Utah and the Utah Association of Certified Public Accountants, respectively, as provided in this Subsection (5)(d).

(ii) A list under Subsection (5)(d)(i) may not include a consultant who has had a contract for services with the district or the receiving entity during the two-year period immediately before the list is provided to the local district.

(iii) Within 20 days of receiving the lists described in Subsection (5)(d)(i), the board of trustees shall eliminate the name of one engineering consultant from the list of engineering consultants and the name of one accounting consultant from the list of accounting consultants and shall notify the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition in writing of the eliminations.

(iv) Within three days of receiving notification under Subsection (5)(d), the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall eliminate another name of an engineering consultant from the list of engineering consultants and another name of an accounting consultant from the list of accounting consultants and shall notify the board of trustees in writing of the eliminations.

(v) The board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition shall continue to alternate between them, each eliminating the name of one engineering consultant from the list of engineering consultants and the name of one accounting consultant from the list of accounting consultants and providing written notification of the eliminations within three days of receiving notification of the previous notification, until the name of only one engineering consultant remains on the list of engineering consultants and the name of only one accounting consultant remains on the list of accounting consultants.

(e) The requirement under Subsection (5)(b) to engage engineering and accounting consultants does not apply if the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition agree on the allocations that are the engineering consultant's responsibility under Subsection (5)(f) or the determinations that are the accounting consultant's responsibility under Subsection (5)(h); provided however, that if engineering and accounting consultants are engaged, the district and the receiving entity, or in cases where there is no receiving entity, the district and the sponsors of the petition shall equally share the cost of the engineering and accounting consultants.

(f) (i) The engineering consultant shall allocate the district assets between the district and the receiving entity as provided in this Subsection (5)(f).

(ii) The engineering consultant shall allocate:

(A) to the district those assets reasonably needed by the district to provide to the area of the district remaining after withdrawal the kind, level, and quality of service that was provided before withdrawal; and

(B) to the receiving entity those assets reasonably needed by the receiving entity to provide to the withdrawn area the kind and quality of service that was provided before withdrawal.

(iii) If the engineering consultant determines that both the local district and the receiving entity reasonably need a district asset to provide to their respective areas the kind and quality of service provided before withdrawal, the engineering consultant shall:

(A) allocate the asset between the local district and the receiving entity according to their relative needs, if the asset is reasonably susceptible of division; or

(B) allocate the asset to the local district, if the asset is not reasonably susceptible of division.

(g) All district assets remaining after application of Subsection (5)(f) shall be allocated to the local district.

(h) (i) The accounting consultant shall determine the withdrawn area's proportionate share of any redemption premium and the principal of and interest on:

(A) the local district's revenue bonds that were outstanding at the time the petition was filed;

(B) the local district's general obligation bonds that were outstanding at the time the petition was filed; and

(C) the local district's general obligation bonds that:

(I) were outstanding at the time the petition was filed; and

(II) are treated as revenue bonds under Subsection (5)(i); and

(D) the district's bonds that were issued prior to the date the petition was filed to refund the district's revenue bonds, general obligation bonds, or general obligation bonds treated as revenue bonds.

(ii) For purposes of Subsection (5)(h)(i), the withdrawn area's proportionate share of redemption premium, principal, and interest shall be the amount that bears the same relationship to the total redemption premium, principal, and interest for the entire district that the average annual gross revenues from the withdrawn area during the three most recent complete fiscal years before the filing of the petition bears to the average annual gross revenues from the entire district for the same period.

(i) For purposes of Subsection (5)(h)(i), a district general obligation bond shall be treated as a revenue bond if:

(i) the bond is outstanding on the date the petition was filed; and

(ii) the principal of and interest on the bond, as of the date the petition was filed, had been paid entirely from local district revenues and not from a levy of ad valorem tax.

(j) (i) Before the board of trustees of the local district files a resolution approving a withdrawal, the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall irrevocably deposit government obligations, as defined in Subsection 11-27-2(6), into an escrow trust fund the principal of and interest on which are sufficient to provide for the timely payment of the amount determined by the accounting consultant under Subsection (5)(h) or in an amount mutually agreeable to the board of trustees of the local district and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition. Notwithstanding Subsection 17B-1-512(1), the board of trustees [~~shall not~~] may not be required to file a resolution approving a withdrawal until the requirements for establishing and funding an escrow trust fund in this Subsection (5)(j)(i) have been met; provided that, if the escrow trust fund has not been established and funded within 180 days after the board of trustees passes a resolution approving a withdrawal, the resolution approving the withdrawal shall be void.

(ii) Concurrently with the creation of the escrow, the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall provide to the board of trustees of the local district:

(A) a written opinion of an attorney experienced in the tax-exempt status of municipal bonds stating that the establishment and use of the escrow to pay the proportionate share of the district's outstanding revenue bonds and general obligation bonds that are treated as revenue bonds will not adversely affect the tax-exempt status of the bonds; and

(B) a written opinion of an independent certified public accountant verifying that the principal of and interest on the deposited government obligations are sufficient to provide for the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection (5)(h).

(iii) The receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall bear all expenses of the escrow and the redemption of the bonds.

(iv) The receiving entity may issue bonds under Title 11, Chapter 14, Local Government Bonding Act, and Title 11, Chapter 27, Utah Refunding Bond Act, to fund the escrow.

(6) A requirement imposed by the board of trustees as a condition to withdrawal under Subsection (5) shall, in addition to being expressed in the resolution, be reduced to a duly authorized and executed written agreement between the parties to the withdrawal.

(7) An area that is the subject of a withdrawal petition under Section 17B-1-504 that results in a board of trustees resolution denying the proposed withdrawal may not be the subject of another withdrawal petition under Section 17B-1-504 for two years after the date of the board of trustees resolution denying the withdrawal.

Section 43. Section 17B-1-512 is amended to read:

17B-1-512. Filing of notice and plat -- Recording requirements -- Contest period -- Judicial review.

(1) (a) Within the time specified in Subsection (1)(b), the board of trustees shall file with the lieutenant governor:

(i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

(ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

(b) The board of trustees shall file the documents listed in Subsection (1)(a):

(i) within 10 days after adopting a resolution approving a withdrawal under Section 17B-1-510; and

(ii) as soon as practicable after receiving a notice under Subsection 10-2-425(2) of an automatic withdrawal under Subsection 17B-1-502(2), after receiving a copy of the municipal legislative body's resolution approving an automatic withdrawal under Subsection 17B-1-502(3)(a), or after receiving notice of a withdrawal of a municipality from a local district under Section 17B-2-505.

(c) Upon the lieutenant governor's issuance of a certificate of withdrawal under Section 67-1a-6.5, the board shall:

(i) if the withdrawn area is located within the boundary of a single county, submit to the recorder of that county:

(A) the original:

(I) notice of an impending boundary action;

(II) certificate of withdrawal; and

(III) approved final local entity plat; and

(B) if applicable, a certified copy of the resolution or notice referred to in Subsection (1)(b); or

(ii) if the withdrawn area is located within the boundaries of more than a single county, submit:

(A) the original of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III) and, if applicable, a certified copy of the resolution or notice referred to in Subsection (1)(b) to one of those counties; and

(B) a certified copy of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III) and a certified copy of the resolution or notice referred to in Subsection (1)(b) to each other county.

(2) (a) Upon the lieutenant governor's issuance of the certificate of withdrawal under Section 67-1a-6.5 for a withdrawal under Section 17B-1-510, for an automatic withdrawal under Subsection 17B-1-502(3), or for the withdrawal of a municipality from a local district under Section 17B-1-505, the withdrawal shall be effective, subject to the conditions of the withdrawal resolution, if applicable.

(b) An automatic withdrawal under Subsection 17B-1-502(3) shall be effective upon the lieutenant governor's issuance of a certificate of withdrawal under Section 67-1a-6.5.

(3) (a) The local district may provide for the publication of any resolution approving or denying the withdrawal of an area:

(i) in a newspaper of general circulation in the area proposed for withdrawal; and

(ii) as required in Section 45-1-101.

(b) In lieu of publishing the entire resolution, the local district may publish a notice of withdrawal or denial of withdrawal, containing:

(i) the name of the local district;

(ii) a description of the area proposed for withdrawal;

(iii) a brief explanation of the grounds on which the board of trustees determined to approve or deny the withdrawal; and

(iv) the times and place where a copy of the resolution may be examined, which shall be at the place of business of the local district, identified in the notice, during regular business hours of the local district as described in the notice and for a period of at least 30 days after the publication of the notice.

(4) Any sponsor of the petition or receiving entity may contest the board's decision to deny a withdrawal of an area from the local district by submitting a request, within 60 days after the resolution is adopted under Section 17B-1-510, to the board of trustees, suggesting terms or conditions to mitigate or eliminate the conditions upon which the board of trustees based its decision to deny the withdrawal.

(5) Within 60 days after the request under Subsection (4) is submitted to the board of trustees, the board may consider the suggestions for mitigation and adopt a resolution approving or denying the request in the same manner as provided in Section 17B-1-510 with respect to the original resolution denying the withdrawal and file a notice of the action as provided in Subsection (1).

(6) (a) Any person in interest may seek judicial review of:

(i) the board of trustees' decision to withdraw an area from the local district;

(ii) the terms and conditions of a withdrawal; or

(iii) the board's decision to deny a withdrawal.

(b) Judicial review under this Subsection (6) shall be initiated by filing an action in the district court in the county in which a majority of the area proposed to be withdrawn is located:

(i) if the resolution approving or denying the withdrawal is published under Subsection (3), within 60 days after the publication or after the board of trustees' denial of the request under Subsection (5);

(ii) if the resolution is not published pursuant to Subsection (3), within 60 days after the resolution approving or denying the withdrawal is adopted; or

(iii) if a request is submitted to the board of trustees of a local district under Subsection (4), and the board adopts a resolution under Subsection (5), within 60 days after the board adopts a resolution under Subsection (5) unless the resolution is

published under Subsection (3), in which event the action [~~must~~] shall be filed within 60 days after the publication.

(c) A court in which an action is filed under this Subsection (6) may not overturn, in whole or in part, the board of trustees' decision to approve or reject the withdrawal unless:

(i) the court finds the board of trustees' decision to be arbitrary or capricious; or

(ii) the court finds that the board materially failed to follow the procedures set forth in this part.

(d) A court may award costs and expenses of an action under this section, including reasonable attorney fees, to the prevailing party.

(7) After the applicable contest period under Subsection (4) or (6), no person may contest the board of trustees' approval or denial of withdrawal for any cause.

Section 44. Section 17B-1-607 is amended to read:

17B-1-607. Tentative budget to be prepared -- Review by governing body.

(1) On or before the first regularly scheduled meeting of the board of trustees in November for a calendar year entity and May for a fiscal year entity, the budget officer of each local district shall prepare for the ensuing year, on forms provided by the state auditor, and file with the board of trustees a tentative budget for each fund for which a budget is required.

(2) (a) Each tentative budget under Subsection (1) shall provide in tabular form:

(i) actual revenues and expenditures for the last completed fiscal year;

(ii) estimated total revenues and expenditures for the current fiscal year; and

(iii) the budget officer's estimates of revenues and expenditures for the budget year.

(b) The budget officer shall estimate the amount of revenue available to serve the needs of each fund, estimate the portion to be derived from all sources other than general property taxes, and estimate the portion that [~~must~~] shall be derived from general property taxes.

(3) The tentative budget, when filed by the budget officer with the board of trustees, shall contain the estimates of expenditures together with specific work programs and any other supporting data required by this part or requested by the board.

(4) The board of trustees shall review, consider, and tentatively adopt the tentative budget in any regular meeting or special meeting called for that purpose and may amend or revise the tentative budget in any manner that the board considers advisable prior to public hearings, but no appropriation required for debt retirement and interest or reduction of any existing deficits under Section 17B-1-613, or otherwise required by law, may be reduced below the minimums so required.

(5) When a new district is created, the board of trustees shall:

(a) prepare a budget covering the period from the date of incorporation to the end of the fiscal year;

(b) substantially comply with all other provisions of this part with respect to notices and hearings; and

(c) pass the budget as soon after incorporation as feasible.

Section 45. Section 17B-2a-807 is amended to read:

17B-2a-807. Public transit district board of trustees -- Appointment -- Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.

(1) (a) If 200,000 people or fewer reside within the boundaries of a public transit district, the board of trustees shall consist of members appointed by the legislative bodies of each municipality, county, or unincorporated area within any county on the basis of one member for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the following calendar year.

(b) For purposes of determining membership under Subsection (1)(a), the number of service miles comprising a unit shall be determined jointly by the legislative bodies of the municipalities or counties comprising the district.

(c) The board of trustees of a public transit district under this Subsection (1) may include a member that is a commissioner on the Transportation Commission created in Section 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex officio member.

(d) Members appointed under this Subsection (1) shall be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties annex to or withdraw from the district using the same appointment procedures.

(e) For purposes of appointing members under this Subsection (1), municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the following calendar year is less than a full unit, as defined in Subsection (1)(b), may combine with any other similarly situated municipality or unincorporated area to form a whole unit and may appoint one member for each whole unit formed.

(2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the boundaries of a public transit district, the board of trustees shall consist of:

(i) 11 members:

(A) appointed as described under this Subsection (2); or

(B) retained in accordance with Section 17B-2a-807.5;

(ii) three members appointed as described in Subsection (4); and

(iii) one voting member appointed as provided in Subsection (11).

(b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting members to each county within the district using an average of:

(i) the proportion of population included in the district and residing within each county, rounded to the nearest 1/11 of the total transit district population; and

(ii) the cumulative proportion of transit sales and use tax collected from areas included in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit sales and use tax collected for the transit district.

(c) The board shall join an entire or partial county not apportioned a voting member under this Subsection (2) with an adjacent county for representation. The combined apportionment basis included in the district of both counties shall be used for the apportionment.

(d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county or combination of counties with the smallest additional fraction of a whole member proportion shall have one less member apportioned to it.

(ii) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county or combination of counties with the largest additional fraction of a whole member proportion shall have one more member apportioned to it.

(e) If the population in the unincorporated area of a county is at least 140,000, the county executive, with the advice and consent of the county legislative body, shall appoint one voting member to represent the population within a county's unincorporated area.

(f) If a municipality's population is at least 160,000, the chief municipal executive, with the advice and consent of the municipal legislative body, shall appoint one voting member to represent the population within a municipality.

(g) (i) The number of voting members appointed from a county and municipalities within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total voting member apportionment under this Subsection (2).

(ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member appointed by an appointing entity may be a locally elected public official.

(h) If the entire county is within the district, the remaining voting members for the county shall represent the county or combination of counties, if Subsection (2)(c) applies, or the municipalities within the county.

(i) If the entire county is not within the district, and the county is not joined with another county under Subsection (2)(c), the remaining voting members for the county shall represent a municipality or combination of municipalities.

(j) (i) Except as provided under Subsections (2)(e) and (f), voting members representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities within the county shall be designated and appointed by a simple majority of the chief executives of the municipalities within the county or combinations of counties if Subsection (2)(c) applies.

(ii) The appointments shall be made by joint written agreement of the appointing municipalities, with the consent and approval of the county legislative body of the county that has at least 1/11 of the district's apportionment basis.

(k) Voting members representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or simple majority of chief executive officers of municipalities with the consent of the legislative body of the municipality or municipalities.

(l) The appointment of voting members shall be made without regard to partisan political affiliation from among citizens in the community.

(m) Each voting member shall be a bona fide resident of the municipality, county, or unincorporated area or areas which the voting member is to represent for at least six months before the date of appointment, and [~~must~~] shall continue in that residency to remain qualified to serve as a voting member.

(n) (i) All population figures used under this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.

(ii) If population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(iii) All transit sales and use tax totals shall be obtained from the State Tax Commission.

(o) (i) The board shall be apportioned as provided under this section in conjunction with the decennial United States Census Bureau report every 10 years.

(ii) Within 120 days following the receipt of the population estimates under this Subsection (2)(o), the district shall reapportion representation on the board of trustees in accordance with this section.

(iii) The board shall adopt by resolution a schedule reflecting the current and proposed apportionment.

(iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to each of its constituent entities as defined under Section 17B-1-701.

(v) The appointing entities gaining a new board member shall appoint a new member within 30 days following receipt of the resolution.

(vi) The appointing entities losing a board member shall inform the board of which member currently serving on the board will step down:

(A) upon appointment of a new member under Subsection (2)(o)(v); or

(B) in accordance with Section 17B-2a-807.5.

(3) Upon the completion of an annexation to a public transit district under Chapter 1, Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the same basis as if the area had been included in the district as originally organized.

(4) In addition to the voting members appointed in accordance with Subsection (2), the board shall consist of three voting members appointed as follows:

(a) one member appointed by the speaker of the House of Representatives;

(b) one member appointed by the president of the Senate; and

(c) one member appointed by the governor.

(5) (a) Except as provided in Section 17B-2a-807.5, the terms of office of the voting members of the board shall be four years or until a successor is appointed, qualified, seated, and has taken the oath of office.

(b) (i) A voting member may not be appointed for more than three successive full terms regardless of the appointing entity that appoints the voting member.

(ii) A person:

(A) may serve no more than 12 years on a public transit district board of trustees described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and

(B) that has served 12 years on a public transit district board of trustees described in Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described in Subsection (2)(a).

(6) (a) Vacancies for voting members shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy within 90 days.

(b) If the appointing official under Subsection (1) does not fill the vacancy within 90 days, the board of trustees of the authority shall fill the vacancy.

(c) If the appointing official under Subsection (2) does not fill the vacancy within 90 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

(7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and ordinances coming before the board of trustees.

(b) A majority of all voting members of the board of trustees are a quorum for the transaction of business.

(c) The affirmative vote of a majority of all voting members present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, is sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

(8) Each public transit district shall pay to each voting member:

(a) an attendance fee of $50 per board or committee meeting attended, not to exceed $200 in any calendar month to any voting member; and

(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.

(9) (a) Members of the initial board of trustees shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings.

(b) The board of trustees shall elect from its voting membership a chair, vice chair, and secretary.

(c) The members elected under Subsection (9)(b) shall serve for a period of two years or until their successors shall be elected and qualified.

(d) On or after January 1, 2011, a locally elected public official is not eligible to serve as the chair, vice chair, or secretary of the board of trustees.

(10) Except as otherwise authorized under Subsection (2)(g) and Section 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's tenure in office, a voting member may not hold any employment, except as an independent contractor or locally elected public official, with a county or municipality within the district.

(11) The Transportation Commission created in Section 72-1-301:

(a) for a public transit district serving a population of 200,000 people or fewer, may appoint a commissioner of the Transportation Commission to serve on the board of trustees as a nonvoting, ex officio member; and

(b) for a public transit district serving a population of more than 200,000 people, shall appoint a commissioner of the Transportation Commission to serve on the board of trustees as a voting member.

(12) (a) (i) Each member of the board of trustees of a public transit district is subject to recall at any time by the legislative body of the county or municipality from which the member is appointed.

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

(iii) The legislative body recalling a board of trustees member shall provide written notice to the member being recalled.

(b) Upon providing written notice to the board of trustees, a member of the board may resign from the board of trustees.

(c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).

Section 46. Section 17B-2a-818.5 is amended to read:

17B-2a-818.5. Contracting powers of public transit districts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means at the time the contract is entered into or renewed:

(i) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state, in which:

(A) the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels:

(Aa) the deductible is $750 per individual and $2,250 per family; and

(Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either:

(I) the lowest deductible permitted for a federally qualified high deductible health plan; or

(II) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(B) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(C) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the state.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the public transit district on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of $1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of $750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The public transit district shall adopt ordinances:

(a) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(b) which establish:

(i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the district shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by an:

(I) actuary; or

(II) underwriter who is responsible for developing the employer group's premium rates; or

(B) a department or division determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 47. Section 18-1-1 is amended to read:

18-1-1. Liability of owners -- Scienter -- Dogs used in law enforcement.

(1) Every person owning or keeping a dog [~~shall be~~] is liable in damages for injury committed by [~~such~~] the dog, and it [~~shall not be~~] is not necessary in [~~any~~] the action brought therefor to allege or prove that [~~such~~] the dog was of a vicious or mischievous disposition or that the owner or keeper [~~thereof~~] of the dog knew that it was vicious or mischievous[~~; but neither~~].

(2) Notwithstanding Subsection (1), neither the state nor any county, city, or town in the state nor

any peace officer employed by any of them shall be liable in damages for injury committed by a dog [~~when: (1) The~~], if:

(a) the dog has been trained to assist in law enforcement[~~,~~]; and [~~(2)~~]

(b) the injury occurs while the dog is reasonably and carefully being used in the apprehension, arrest, or location of a suspected offender or in maintaining or controlling the public order.

Section 48. Section 19-1-206 is amended to read:

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means at the time the contract is entered into or renewed:

(i) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state, in which:

(A) the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels:

(Aa) the deductible is $750 per individual and $2,250 per family; and

(Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either:

(I) the lowest deductible permitted for a federally qualified high deductible health plan; or

(II) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(B) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(C) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the state.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of $1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of $750,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division or board of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to the public transit district compliance with this section [~~which~~] that shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 49. Section 19-2-109.1 is amended to read:

19-2-109.1. Operating permit required -- Emissions fee -- Implementation.

(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

(a) "EPA" means the federal Environmental Protection Agency.

(b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

(c) "Operating permit" means a permit issued by the executive secretary to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.

(e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

(2) (a) A person may not operate any source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the executive secretary under procedures the board establishes by rule.

(b) A person is not required to submit an operating permit application until the governor has submitted an operating permit program to the EPA.

(c) Any operating permit issued under this section may not become effective until the day after the EPA issues approval of the permit program or November 15, 1995, whichever occurs first.

(3) (a) Operating permits issued under this section shall be for a period of five years unless the board makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.

(b) The executive secretary may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.

(c) The executive secretary shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.

(d) The executive secretary may terminate, modify, revoke, or reissue an operating permit for cause.

(4) (a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.

(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.

(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).

(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(5) Emissions fees for the period:

(a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions inventory prepared by the executive secretary; and

(b) on and after July 1, 1993, but [~~prior to~~] before issuance of an operating permit, shall be based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to base the fee on allowable emissions, if applicable for a regulated pollutant.

(6) After an operating permit is issued the emissions fee shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(7) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the executive secretary may:

(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or

(b) revoke the operating permit.

(8) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

(a) The owner or operator [~~must~~] shall pay the fee under protest prior to being entitled to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the fee or penalty under this section.

(b) A request for a hearing under this Subsection (8) shall be made after payment of the emissions fee and within six months after the emissions fee was due.

(9) To reinstate an operating permit revoked under Subsection (7) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

(10) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.

(11) Failure of the executive secretary to act on any operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the executive secretary to take action on the permit or its renewal without additional delay:

(a) the applicant;

(b) any person who participated in the public comment process; or

(c) any other person who could obtain judicial review of that action under applicable law.

Section 50. Section 19-2-113 is amended to read:

19-2-113. Variances -- Judicial review.

(1) (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b) (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it [~~shall not~~] may not be granted for more than one year.

(4) (a) Any variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5) (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air contaminant source is situated.

(6) (a) The board may review any variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.

Section 51. Section 19-2-115 is amended to read:

19-2-115. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

(2) (a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed $10,000 per day for each violation.

(b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

(c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.

(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person knowingly violates any of the following under this chapter:

(a) an applicable standard or limitation;

(b) a permit condition; or

(c) a fee or filing requirement.

(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation who knowingly:

(a) makes any false material statement, representation, or certification, in any notice or report required by permit; or

(b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.

(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.

(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.

(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the executive secretary that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1)(a), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation in the case of the first offense, and not more than $50,000 per day of violation in the case of subsequent offenses.

(8) (a) As used in this section:

(i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C. 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).

(ii) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person with criminal negligence:

(A) releases into the ambient air any hazardous air pollutant; and

(B) places another person in imminent danger of death or serious bodily injury.

(ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.

(c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $50,000 per day of violation if that person:

(i) knowingly releases into the ambient air any hazardous air pollutant; and

(ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.

(d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than $1,000,000.

(e) (i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and [~~must~~] shall prove that defense by a preponderance of the evidence.

(9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 52. Section 19-3-302 is amended to read:

19-3-302. Legislative intent.

(1) (a) The state [~~of Utah~~] enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state [~~of Utah~~] in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or congressional intent.

(3) The state [~~of Utah~~] has environmental and economic interests which do not involve nuclear safety regulation, and which [~~must~~] shall be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state [~~of Utah~~]. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials

and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7) (a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Section 53. Section 19-3-308 is amended to read:

19-3-308. Application fee and annual fees.

(1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including[~~, but not limited to~~] providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63J-1-504, to be assessed:

(a) per ton of storage cask and high-level nuclear waste per year for storage, decay in storage, treatment, or disposal of high-level nuclear waste;

(b) per ton of transportation cask and high-level nuclear waste for each transfer of high-level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and Hazard Compensation Account, created in Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Section 54. Section 19-4-112 is amended to read:

19-4-112. Limit on authority of department and board to control irrigation facilities -- Precautions relating to nonpotable water systems.

(1) Except as provided in this section and in Section 19-5-104, nothing contained in this chapter authorizes the department or board to:

(a) exercise administrative control over water used solely for irrigation purposes, whether conveyed in pipes, ditches, canals, or by other facilities; or

(b) adopt rules relating to the construction, operation, and maintenance of facilities for conveying irrigation water to the place of use.

(2) Where nonpotable water is conveyed in pipelines under pressure in areas served by a potable water system, the following precautions shall be observed:

(a) a distinctive coloring or other marking on all exposed portions of the nonpotable system shall be used;

(b) potable and nonpotable water system service lines and extensions shall be completely separated and shall be installed in separate trenches;

(c) all hydrants and sprinkling system control valves shall be operated by a removable key so that it is not possible to turn on the hydrant or valve without a key;

(d) there shall be no cross connection between the potable and nonpotable water systems;

(e) the nonpotable system [~~shall not~~] may not be extended into any building except greenhouses or other buildings for plant and animal production; and

(f) no connection in the nonpotable water system shall be made except by the persons responsible for its management.

Section 55. Section 19-5-102 is amended to read:

19-5-102. Definitions.

As used in this chapter:

(1) "Board" means the Water Quality Board created in Section 19-1-106.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Discharge" means the addition of any pollutant to any waters of the state.

(4) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(6) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

(7) "Executive secretary" means the executive secretary of the board.

(8) "Point source":

(a) means any discernible, confined, and discrete conveyance, including [~~but not limited to~~] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

(9) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(10) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

(11) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

(12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

(13) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

(15) "Underground injection" means the subsurface emplacement of fluids by well injection.

(16) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

(17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(18) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 56. Section 19-5-115 is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" [~~shall mean~~] are as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding $25,000 per day who with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

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

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that he is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)[~~(a)~~](b), be subject to a fine of not more than $1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and [~~must~~] shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending

administrative or judicial review, the board may, through its executive secretary, initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 57. Section 19-5-116 is amended to read:

19-5-116. Limitation on effluent limitation standards for BOD, SS, Coliforms, and pH for domestic or municipal sewage.

Unless required to meet instream water quality standards or federal requirements established under the federal Water Pollution Control Act, the board [~~shall not~~] may not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal sewage which are more stringent than the following:

(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period [~~shall not~~] may not exceed either 2000/100 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period [~~shall not~~] may not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.

(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

Section 58. Section 19-5-121 is amended to read:

19-5-121. Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.

(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.

(2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.

(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

(i) has the capability of properly conducting the tests; and

(ii) is supervised by a certified individual when conducting the tests.

(3) (a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

(b) (i) The rules shall specify requirements for education and training and the type and duration of experience necessary to obtain certification.

(ii) The rules shall recognize the following in meeting the requirements for certification:

(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;

(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or

(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(iii) If eligibility for certification is based on experience, the applicant for certification [~~must~~] shall show proof of experience.

(4) The department may establish fees in accordance with Section 63J-1-504 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Section 59. Section 19-6-108 is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the executive secretary for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the executive secretary information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The executive secretary may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the executive secretary for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until [~~he~~] the person receives, in addition to and subsequent to local government approval and subsequent to the approval required in Subsection (3)(a), approval by the governor and the Legislature.

(ii) Facilities referred to in Subsection (3)(c)(i) are:

(A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil

fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The executive secretary shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that [~~he~~] the executive secretary cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The executive secretary shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The executive secretary shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the executive secretary shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness.

(ii) If the plan is determined by the executive secretary to be incomplete, [~~he~~] the executive secretary shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The executive secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the executive secretary determines that the proposed plan, or any part of it, will not comply with applicable rules, the executive secretary shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the board determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the executive secretary determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the executive secretary considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the executive secretary determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The executive secretary shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in

the state where it is generated and which is received for disposal in this state [~~shall not~~] may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the executive secretary.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Section 60. Section 19-6-116 is amended to read:

19-6-116. Application of part subject to state assumption of primary responsibility from federal government -- Authority of political subdivisions.

(1) The requirements of this part applicable to the generation, treatment, storage, or disposal of hazardous waste, and the rules adopted under this part, [~~shall not~~] do not take effect until this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) This part does not alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this part or the rules of the board.

Section 61. Section 19-6-202 is amended to read:

19-6-202. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.

(3) "Hazardous wastes" means wastes as defined in Section 19-6-102.

(4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including [~~but not limited to~~] physical, chemical, or thermal processing systems, incinerators, and secure landfills.

(5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

(6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the board pursuant to Sections 19-6-204 and 19-6-205.

(7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.

(8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

Section 62. Section 19-6-203 is amended to read:

19-6-203. Other provisions relating to hazardous waste.

This part [~~shall not~~] may not be construed to supersede any other state or local law relating to hazardous waste, except as otherwise provided in Section 19-6-207.

Section 63. Section 19-6-205 is amended to read:

19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2) (a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

(i) the hazardous wastes generated in the state;

(ii) those likely to be generated in the future;

(iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;

(iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;

(v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and

(vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) (i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.

(ii) The board [~~shall not~~] may not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its county executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.

(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.

(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.

(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4) (a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.

(b) The final siting plan shall be widely distributed to members of the public.

(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5) (a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8) (a) If necessary, the board may amend the siting plan to provide additional sites or delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

Section 64. Section 19-6-413 is amended to read:

19-6-413. Tank tightness test -- Actions required after testing.

(1) The owner or operator of any petroleum storage tank registered [~~prior to~~] before July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and [~~prior to~~] before January 1, 1990, if the test meets

requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and [~~prior to~~] before July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the executive secretary at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

(ii) submit evidence of the correction to the executive secretary.

(b) When the executive secretary receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the executive secretary shall:

(i) approve or disapprove the correction; and

(ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The executive secretary shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.

(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Section 65. Section 19-6-714 is amended to read:

19-6-714. Recycling fee on sale of oil.

(1) On and after October 1, 1993, a recycling fee of $.04 per quart or $.16 per gallon is imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

(2) A fee under this section [~~shall not~~] may not be collected on sales of lubricating oil:

(a) shipped outside the state;

(b) purchased in five-gallon or smaller containers and used solely in underground mining operations; or

(c) in bulk containers of 55 gallons or more.

(3) This fee is in addition to all other state, county, or municipal fees and taxes imposed on the sale of lubricating oil.

(4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply to this part.

(5) The commission may make rules to implement and enforce the provisions of this section.

Section 66. Section 19-6-814 is amended to read:

19-6-814. Local health department responsibility.

(1) A local health department that has received an application for partial reimbursement from a recycler shall within 15 calendar days after receiving the application:

(a) review the application for completeness;

(b) conduct an on-site investigation of the recycler's waste tire use if the application is the initial application of the recycler; and

(c) submit the recycler's application for partial reimbursement together with a brief written report of the results of the investigation and the dollar amount approved for payment to the Division of Finance.

(2) If the local health department approves a dollar amount for partial reimbursement which is less than the amount requested by the recycler, the local health department [~~must~~] shall submit its written report of the investigation and recommendation to the recycler at least five days prior to submitting the report and recommendation to the Division of Finance.

Section 67. Section 19-9-105 is amended to read:

19-9-105. Powers of authority.

The authority is a body corporate and politic that may:

(1) sue and be sued in its own name;

(2) have a seal and alter the seal at will;

(3) borrow money and issue obligations, including refunding obligations, and provide for the rights of holders of those obligations;

(4) establish hazardous waste treatment, disposal, or storage surcharge schedules for facilities operated by, or under authority of, the authority, and require all private facility operators who contract with the authority to collect fees for all hazardous waste received for treatment, disposal, or storage by those private facilities;

(5) promulgate rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;

(6) enter into contracts and leases and execute all instruments necessary, convenient, or desirable;

(7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in property that is

necessary, convenient, or desirable to carry out the purposes of this chapter, and sell, lease, transfer, and dispose of any property or interest in property at any time required in the exercise of its power, including[~~, but not limited to,~~] the sale, transfer, or disposal of any materials, substances, or sources or forms of energy derived from any activity engaged in by the authority;

(8) contract with experts, advisers, consultants, and agents for needed services;

(9) appoint officers and employees required for the performance of its duties, and fix and determine their qualifications and duties;

(10) make, or contract for, plans, surveys, and studies necessary, convenient, or desirable to effectuate its purposes and powers and prepare any recommendations with respect to those plans, surveys, or studies;

(11) receive and accept aid or contributions from any source, including the United States or the state, in the form of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter, subject to the conditions imposed upon that aid or contributions consistent with this chapter;

(12) enter into agreements with any department, agency, or instrumentality of the United States or this state, or any financial institution, or contractor for the purpose of leasing and operating any facility;

(13) consent to the modification of any obligation with the holder of that obligation, to the extent permitted by the obligation, relating to rates of interest or to the time and payment of any installment of principal or interest, or to the modification of any other contract, mortgage, mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

(14) pledge revenues from any hazardous waste treatment, disposal, and storage facility to secure payment of any obligations relating to that facility, including interest on, and redemption of, those obligations;

(15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge agreements, assignments, security agreements, and financing statements that encumber property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the sale of such obligations;

(16) exercise the power of eminent domain;

(17) do all other things necessary to comply with the requirements of 42 U.S.C. Sections 6901–6986, the Resource Conservation and Recovery Act of 1976, and this part;

(18) contract for the construction, operation, and maintenance of hazardous waste treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous waste, subject to approval by the board; and

(19) exercise any other powers or duties necessary or appropriate to carry out and effectuate this chapter.

Section 68. Section 19-9-109 is amended to read:

19-9-109. Security for obligations -- Provisions of security instruments.

(1) The principal and interest on any obligation issued pursuant to this chapter shall be secured by:

(a) a pledge and assignment of the proceeds earned by the facility built and acquired with the proceeds of the obligations;

(b) a mortgage or trust deed on the facility built and acquired with the proceeds from the obligations; and

(c) such other security on the facility as is deemed most advantageous by the authority.

(2) Obligations authorized for issuance under this chapter and any mortgage or other security given to secure such obligations may contain any provisions customarily contained in security instruments, including[~~, but not limited to~~]:

(a) the fixing and collection of fees from the facility;

(b) the maintenance of insurance on the facility;

(c) the creation and maintenance of special funds to receive revenues earned by the facility; and

(d) the rights and remedies available to obligation holders in the event of default.

(3) All mortgages, trust deeds, security agreements, or trust indentures on a facility shall provide, in the event of foreclosure, that no deficiency judgment may be entered against the authority, the state, or any of the state's political subdivisions.

(4) Any mortgage or other security instrument securing such obligations may provide that in the event of a default in the payment of principal or interest or in the performance of any agreement, that payment or performance may be enforced by the appointment of a receiver with power to charge and collect fees and to apply the revenues from the facility in accordance with the provisions of the security instrument.

(5) Any mortgage or other security instrument made pursuant to this chapter may also provide that in the event of default in payment or breach of a condition, that the mortgage may be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under the mortgage or the holder of any obligation secured by such mortgage may, if the highest bidder, purchase the security at foreclosure sale.

Section 69. Section 19-10-104 is amended to read:

19-10-104. Requirements for creation of institutional control.

An environmental institutional control shall:

(1) be in writing and shall be recorded by the owner of the real property in the county recorder's office in the county where the real property is located;

(2) contain a legal description of the area of the real property that is subject to the institutional control;

(3) include a statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect the public health, safety, or welfare, or the environment;

(4) include a statement that the institutional control runs with the land and is binding on all successors in interest unless or until the institutional control is removed as provided in Section 19-10-105;

(5) include a statement acknowledging the department's right of access to the property at all reasonable times to verify that the institutional controls are being maintained;

(6) include a statement explaining how the institutional control can be modified or terminated and stating that if any person desires to cancel or modify the institutional control in the future, the person [~~must~~] shall obtain prior written approval from the executive director pursuant to this chapter;

(7) include a notarized signature of the executive director indicating approval of the environmental institutional control; and

(8) include the notarized signature of the property owner indicating approval of the environmental institutional control.

Section 70. Section 20A-1-401 is amended to read:

20A-1-401. Interpretation of election laws -- Computation of time.

(1) Courts and election officers shall construe the provisions of [~~Title 20A, Election Code,~~] this title liberally to carry out the intent of this title.

(2) Except as provided under Subsection (3), Saturdays, Sundays, and holidays shall be included in all computations of days made under the provisions of [~~Title 20A, Election Code~~] this title.

(3) Unless otherwise specifically provided for under this title [~~20A~~]:

(a) when computing any number of days before or after a specified date or event under this [~~Title 20A~~] title, the specified date or day of the event [~~shall not be~~] is not included in the count; and

(b) (i) if the commencement date of a time period preceding a specified date or event falls on a Saturday, Sunday, or legal holiday, the following business day shall be used;

(ii) if the last day of a time period following a specified date or event falls on a Saturday, Sunday, or legal holiday, the time period shall be extended to the following business day; and

(iii) if a deadline that falls before or after a specified date or event falls on a Saturday, Sunday, or legal holiday, the deadline shall be considered to fall on the following business day.

Section 71. Section 20A-1-508 is amended to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

(b) "County offices" does not mean the offices of president and vice president of the United States, United States senators and representatives, members of the Utah Legislature, state constitutional officers, county attorneys, district attorneys, and judges.

(2) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this Subsection (2).

(b) (i) To appoint an interim replacement, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three nominees for the interim replacement to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint an interim replacement from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed as interim replacement under this Subsection (2) shall hold office until their successor is elected and has qualified.

(3) (a) The requirements of this Subsection (3) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the person was elected but before April 10 of the next even-numbered year.

(b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(ii) All persons intending to become candidates for the vacant office shall:

(A) file a declaration of candidacy according to the procedures and requirements of Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) if nominated as a party candidate or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general election.

(4) (a) The requirements of this Subsection (4) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50 days before the regular primary election.

(b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk shall notify the public and each registered political party that:

(A) the vacancy exists; and

(B) identifies the date and time by which a person interested in becoming a candidate [~~must~~] shall file a declaration of candidacy.

(ii) All persons intending to become candidates for the vacant offices shall, within five days after the date that the notice is made, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk at least 35 days before the regular primary election.

(5) (a) The requirements of this Subsection (5) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 50 days or less remain before the regular primary election but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county central committees of each political party registered under this title that wishes to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(6) (a) The requirements of this Subsection (6) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the county central committee of the same political party as the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three nominees to fill the vacancy to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint a person to fill the vacancy from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed to fill the vacancy under this Subsection (6) shall hold office until their successor is elected and has qualified.

(7) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(8) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

(9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a county office shall serve for the remainder of the unexpired term of the person who created the vacancy and until a successor is elected and qualified.

(b) Nothing in this section may be construed to contradict or alter the provisions of Section 17-16-6.

Section 72. Section 20A-1-509.1 is amended to read:

20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15 or more attorneys.

(1) When a vacancy occurs in the office of county or district attorney in a county or district having 15 or more attorneys who are licensed active members in good standing with the Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

(2) (a) The requirements of this Subsection (2) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs before the third Friday in March of the even-numbered year.

(b) When the conditions established in Subsection (2)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(c) All persons intending to become candidates for the vacant office shall:

(i) file a declaration of candidacy according to the procedures and requirements of [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

(ii) if nominated as a party candidate or qualified as an independent or write-in candidate under [~~Title 20A,~~] Chapter 9, Candidate Qualifications and Nominating Procedures, run in the regular general election; and

(iii) if elected, complete the unexpired term of the person who created the vacancy.

(d) If the vacancy occurs after the second Friday in March and before the third Friday in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be extended until seven days after the county clerk gives notice under Subsection (2)(b), but no later than the fourth Friday in March.

(3) (a) The requirements of this Subsection (3) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the third Friday in March of the even-numbered year but more than 50 days before the regular primary election.

(b) When the conditions established in Subsection (3)(a) are met, the county clerk shall:

(i) notify the public and each registered political party that the vacancy exists; and

(ii) identify the date and time by which a person interested in becoming a candidate [~~must~~] shall file a declaration of candidacy.

(c) All persons intending to become candidates for the vacant office shall:

(i) within five days after the date that the notice is made, ending at at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office as required by [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and [~~Nominating Procedures~~] Declarations of Candidacy; and

(ii) if elected, complete the unexpired term of the person who created the vacancy.

(d) The county central committee of each party shall:

(i) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(ii) certify the name of the candidate or candidates to the county clerk at least 35 days before the regular primary election.

(4) (a) The requirements of this Subsection (4) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of two years or more; and

(ii) 50 days or less remain before the regular primary election but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (4)(a) are met, the county central committees of each registered political party that wish to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(c) The candidate elected shall complete the unexpired term of the person who created the vacancy.

(5) (a) The requirements of this Subsection (5) apply when the office of county attorney or district attorney becomes vacant and:

(i) the vacant office has an unexpired term of less than two years; or

(ii) the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior officeholder and invite that committee to submit the names of three nominees to fill the vacancy.

(c) That county central committee shall, within 30 days of receiving notice from the county legislative body, submit to the county legislative body the names of three nominees to fill the vacancy.

(d) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(e) If the county legislative body fails to appoint a person to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(i) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(ii) contains the list of nominees submitted by the party central committee.

(f) The governor shall appoint a person to fill the vacancy from that list of nominees within 30 days after receipt of the letter.

(g) A person appointed to fill the vacancy under Subsection (5) shall complete the unexpired term of the person who created the vacancy.

(6) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the required time limits.

Section 73. Section 20A-1-703 is amended to read:

20A-1-703. Proceedings by registered voter.

(1) Any registered voter who has information that any provisions of this title have been violated by any candidate for whom the registered voter had the right to vote, by any personal campaign committee of that candidate, by any member of that committee, or by any election official, may file a verified petition with the lieutenant governor.

(2) (a) The lieutenant governor shall gather information and determine if a special investigation is necessary.

(b) If the lieutenant governor determines that a special investigation is necessary, the lieutenant governor shall refer the information to the attorney general, who shall:

(i) bring a special proceeding to investigate and determine whether or not there has been a violation; and

(ii) appoint special counsel to conduct that proceeding on behalf of the state.

(3) If it appears from the petition or otherwise that sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred, the attorney general shall:

(a) grant leave to bring the proceeding; and

(b) appoint special counsel to conduct the proceeding.

(4) (a) If leave is granted, the registered voter may, by a special proceeding brought in the district court in the name of the state upon the relation of the registered voter, investigate and determine whether or not the candidate, candidate's personal campaign committee, any member of the candidate's personal campaign committee, or any election officer has violated any provision of this title.

(b) (i) In the proceeding, the complaint shall:

(A) be served with the summons; and

(B) set forth the name of the person or persons who have allegedly violated this title and the grounds of those violations in detail.

(ii) The complaint may not be amended except by leave of the court.

(iii) The summons and complaint in the proceeding shall be filed with the court no later than five days after they are served.

(c) (i) The answer to the complaint shall be served and filed within 10 days after the service of the summons and complaint.

(ii) Any allegation of new matters in the answer shall be considered controverted by the adverse party without reply, and the proceeding shall be considered at issue and stand ready for trial upon five days' notice of trial.

(d) (i) All proceedings initiated under this section have precedence over any other civil actions.

(ii) The court shall always be considered open for the trial of the issues raised in this proceeding.

(iii) The proceeding shall be tried and determined as a civil action without a jury, with the court determining all issues of fact and issues of law.

(iv) If more than one proceeding is pending or the election of more than one person is investigated and contested, the court may:

(A) order the proceedings consolidated and heard together; and

(B) equitably apportion costs and disbursements.

(e) (i) Either party may request a change of venue as provided by law in civil actions, but application for a change of venue [~~must~~] shall be made within five days after service of summons and complaint.

(ii) The judge shall decide the request for a change of venue and issue any necessary orders within three days after the application is made.

(iii) If a party fails to request a change of venue within five days of service, [~~he~~] that party has waived [~~his~~] that party's right to a change of venue.

(f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to recover his taxable costs and disbursements against the person whose right to the office is contested.

(ii) The judge may not award costs to the defendant unless it appears that the proceeding was brought in bad faith.

(iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide whether or not to award costs and disbursements.

(5) Nothing in this section may be construed to prohibit any other civil or criminal actions or remedies against alleged violators.

(6) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Section 74. Section 20A-2-102.5 is amended to read:

20A-2-102.5. Voter registration deadline.

(1) Except as provided in Section 20A-2-201 and in [~~Title 20A,~~] Chapter 3, Part 4, Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person who fails to submit a correctly completed voter registration form on or before the voter registration deadline [~~shall not~~] may not be permitted to vote in the election.

(2) The voter registration deadline shall be the date that is 30 calendar days before the date of the election.

Section 75. Section 20A-2-105 is amended to read:

20A-2-105. Determining residency.

(1) Except as provided in Subsection (4), election officials and judges shall apply the standards and requirements of this section when determining whether or not a person is a resident for purposes of interpreting this title or the Utah Constitution.

(2) A "resident" is a person who resides within a specific voting precinct in Utah as provided in this section.

(3) (a) A person resides in Utah if:

(i) the person's principal place of residence is within Utah; and

(ii) the person has a present intention to continue residency within Utah permanently or indefinitely.

(b) A person resides within a particular voting precinct if, as of the date of registering to vote, the person has the person's principal place of residence in that voting precinct.

(4) (a) The principal place of residence of any person shall be determined by applying the provisions of this Subsection (4).

(b) A person's "principal place of residence" is that place in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(c) A person has not gained or lost a residence solely because the person is present in Utah or present in a voting precinct or absent from Utah or absent from the person's voting precinct because the person is:

(i) employed in the service of the United States or of Utah;

(ii) a student at any institution of learning;

(iii) incarcerated in prison or jail; or

(iv) residing upon any Indian or military reservation.

(d) (i) A member of the armed forces of the United States is not a resident of Utah merely because that member is stationed at any military facility within Utah.

(ii) In order to be a resident of Utah, that member [~~must~~] shall meet the other requirements of this section.

(e) (i) Except as provided in Subsection (4)(e)(ii), a person has not lost the person's residence if that person leaves the person's home to go into a foreign country or into another state or into another voting precinct within Utah for temporary purposes with the intention of returning.

(ii) If that person has voted in that other state or voting precinct, the person is a resident of that other state or voting precinct.

(f) A person is not a resident of any county or voting precinct if that person comes for temporary purposes and does not intend to make that county or voting precinct the person's home.

(g) If a person removes to another state with the intention of making it the person's principal place of residence, the person loses the person's residence in Utah.

(h) If a person moves to another state with the intent of remaining there for an indefinite time as a place of permanent residence, the person loses the person's residence in Utah, even though the person intends to return at some future time.

(i) (i) Except as provided in Subsection (4)(i)(ii), the place where a person's family resides is presumed to be the person's place of residence.

(ii) A person may rebut the presumption established in Subsection (4)(i)(i) by proving the person's intent to remain at a place other than where the person's family resides.

(j) (i) A person has changed [~~his~~] the person's residence if:

(A) the person has acted affirmatively to [~~remove himself~~] move from one geographic location; and

(B) the person has an intent to remain in another place.

(ii) There can only be one residence.

(iii) A residence cannot be lost until another is gained.

(5) In computing the period of residence, a person shall:

(a) include the day on which the person's residence begins; and

(b) exclude the day of the next election.

(6) (a) There is a presumption that a person is a resident of Utah and of a voting precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath or affirmation upon a registration application form that the person's residence address and place of residence is within a specific voting precinct in Utah.

(b) The election officers and election officials shall allow that person to register and vote unless, upon a challenge by a registrar or some other person, it is

shown by law or by clear and convincing evidence that:

(i) the person does not intend to remain permanently or indefinitely in Utah; or

(ii) the person is incarcerated in prison or jail.

(7) (a) The rules set forth in this section for determining place of residence for voting purposes do not apply to a person incarcerated in prison or jail.

(b) For voting registration purposes, a person incarcerated in prison or jail is considered to reside in the voting precinct in which the person's place of residence was located before incarceration.

(8) If a person's principal place of residence is a residential parcel of one acre in size or smaller that is divided by the boundary line between two or more counties, that person shall be considered a resident of the county in which a majority of the residential parcel lies.

Section 76. Section 20A-2-306 is amended to read:

20A-2-306. Removing names from the official register -- Determining and confirming change of residence.

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

(a) confirms in writing that the voter has changed residence to a place outside the county; or

(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

(ii) has failed to respond to the notice required by Subsection (3).

(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed:

"VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

– you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

– if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____

Signature of Voter"

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that [~~his~~] the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the clerk may list that voter as inactive.

(ii) An inactive voter [~~must~~] shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iii) A county is not required to send routine mailings to inactive voters and is not required to count inactive voters when dividing precincts and preparing supplies.

Section 77. Section 20A-4-201 is amended to read:

20A-4-201. Delivery of election returns.

(1) One poll worker shall deliver the ballot box, the lock, and the key to:

(a) the election officer; or

(b) the location directed by the election officer.

(2) (a) Before they adjourn, the poll workers shall choose one or more of their number to deliver the election returns to the election officer.

(b) That poll worker or those poll workers shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than 24 hours after the polls close; or

(ii) if the polling place is 15 miles or more from the county seat, mail the election returns to the election officer by registered mail from the post office most convenient to the polling place within 24 hours after the polls close.

(3) The election officer shall pay each poll worker reasonable compensation for travel that is necessary to deliver the election returns and to return to the polling place.

(4) The requirements of this section [~~shall not~~] do not prohibit transmission of the unofficial vote count to the counting center via electronic means, provided that reasonable security measures are taken to preserve the integrity and privacy of the transmission.

Section 78. Section 20A-5-403 is amended to read:

20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections -- Arrangements.

(1) Each election officer shall:

(a) designate polling places for each voting precinct in the jurisdiction; and

(b) obtain the approval of the county or municipal legislative body or local district governing board for those polling places.

(2) (a) For each polling place, the election officer shall provide:

(i) an American flag;

(ii) a sufficient number of voting booths or compartments;

(iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets, write-in ballots, and any other records and supplies necessary to enable a voter to vote;

(iv) the constitutional amendment cards required by Part 1, Election Notices and Instructions;

(v) voter information pamphlets required by [~~Title 20A,~~] Chapter 7, Part 7, Voter Information Pamphlet;

(vi) the instruction cards required by Section 20A-5-102; and

(vii) a sign, to be prominently displayed in the polling place, indicating that valid voter identification is required for every voter before the voter may vote and listing the forms of identification that constitute valid voter identification.

(b) Each election officer shall ensure that:

(i) each voting booth is at a convenient height for writing, and is arranged so that the voter can prepare [~~his~~] the voter's ballot screened from observation;

(ii) there are a sufficient number of voting booths or voting devices to accommodate the voters at that polling place; and

(iii) there is at least one voting booth or voting device that is configured to accommodate persons with disabilities.

(c) Each county clerk shall provide a ballot box for each polling place that is large enough to properly receive and hold the ballots to be cast.

(3) (a) All polling places shall be physically inspected by each county clerk to ensure access by a person with a disability.

(b) Any issues concerning inaccessibility to polling places by a person with a disability discovered during the inspections referred to in Subsection (3)(a) or reported to the county clerk shall be:

(i) forwarded to the Office of the Lieutenant Governor; and

(ii) within six months of the time of the complaint, the issue of inaccessibility shall be either:

(A) remedied at the particular location by the county clerk;

(B) the county clerk shall designate an alternative accessible location for the particular precinct; or

(C) if no practical solution can be identified, file with the Office of the Lieutenant Governor a written explanation identifying the reasons compliance cannot reasonably be met.

(4) (a) The municipality in which the election is held shall pay the cost of conducting each municipal election, including the cost of printing and supplies.

(b) (i) Costs assessed by a county clerk to a municipality under this section [~~shall not~~] may not exceed the actual costs incurred by the county clerk.

(ii) The actual costs shall include:

(A) costs of or rental fees associated with the use of election equipment and supplies; and

(B) reasonable and necessary administrative costs.

(5) The county clerk shall make detailed entries of all proceedings had under this chapter.

Section 79. Section 20A-6-302 is amended to read:

20A-6-302. Paper ballots -- Placement of candidates' names.

(1) Each election officer shall ensure, for paper ballots in regular general elections, that:

(a) except for candidates for state school board and local school boards:

(i) each candidate is listed by party; and

(ii) candidates' surnames are listed in alphabetical order on the ballots when two or more candidates' names are required to be listed on a ticket under the title of an office;

(b) the names of candidates for the State Board of Education are placed on the ballot as certified by the lieutenant governor under Section 20A-14-105;

(c) if candidates for membership on a local board of education were selected in a regular primary election, the name of the candidate who received the most votes in the regular primary election is listed first on the ballot; and

(d) if candidates for membership on a local board of education were not selected in the regular primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk.

(2) (a) The election officer may not allow the name of a candidate who dies or withdraws before election day to be printed upon the ballots.

(b) If the ballots have already been printed, the election officer:

(i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a line through the candidate's name before the ballots are delivered to voters; and

(ii) may not count any votes for that dead or withdrawn candidate.

(3) (a) When there is only one candidate for county attorney at the regular general election in counties that have three or fewer registered voters of the county who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of county attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of county attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for county attorney is printed on the ballot under authority of this Subsection (3), the county clerk may not count any write-in votes received for the office of county attorney.

(e) If no qualified person files for the office of county attorney or if the candidate is not elected by the voters, the county legislative body shall appoint the county attorney as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (3)(f), be placed on the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (3)(a) [~~shall not~~] does not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (3)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

(4) (a) When there is only one candidate for district attorney at the regular general election in a prosecution district that has three or fewer registered voters of the district who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of district attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of district attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may [~~he~~] the candidate continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for district attorney is printed on the ballot under authority of this Subsection (4), the county clerk may not count any write-in votes received for the office of district attorney.

(e) If no qualified person files for the office of district attorney, or if the only candidate is not elected by the voters under this subsection, the county legislative body shall appoint a new district attorney for a four-year term as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (4)(f), be placed on the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (4)(a) [~~shall not~~] does not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (4)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

Section 80. Section 20A-7-202 is amended to read:

20A-7-202. Statewide initiative process -- Application procedures -- Time to gather signatures -- Grounds for rejection.

(1) Persons wishing to circulate an initiative petition shall file an application with the lieutenant governor.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a resident of Utah; and

(ii) has voted in a regular general election in Utah within the last three years;

(c) the signature of each of the sponsors, attested to by a notary public;

(d) a copy of the proposed law that includes:

(i) the title of the proposed law, which clearly expresses the subject of the law; and

(ii) the text of the proposed law; and

(e) a statement indicating whether or not persons gathering signatures for the petition may be paid for doing so.

(3) The application and its contents are public when filed with the lieutenant governor.

(4) (a) The sponsors shall qualify the petition for the regular general election ballot no later than one year after the application is filed.

(b) If the sponsors fail to qualify the petition for that ballot, the sponsors [~~must~~] shall:

(i) submit a new application;

(ii) obtain new signature sheets; and

(iii) collect signatures again.

(5) The lieutenant governor shall reject the application and not issue circulation sheets if:

(a) the law proposed by the initiative is patently unconstitutional;

(b) the law proposed by the initiative is nonsensical;

(c) the proposed law could not become law if passed;

(d) the law contains more than one subject;

(e) the subject of the law is not clearly expressed in the law's title; or

(f) the law proposed by the initiative is identical or substantially similar to a law proposed by an initiative that was submitted to the county clerks and lieutenant governor for certification and evaluation within two years preceding the date on which the application for this initiative was filed.

Section 81. Section 20A-7-204.1 is amended to read:

20A-7-204.1. Public hearings to be held before initiative petitions are circulated.

(1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of Planning and Budget and before circulating initiative petitions for signature statewide, sponsors of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

(i) one in the Bear River region -- Box Elder, Cache, or Rich County;

(ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region -- Summit, Utah, or Wasatch County;

(iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

(v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;

(vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and

(vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) Of the seven meetings, at least two of the meetings [~~must~~] shall be held in a first or second class county, but not in the same county.

(2) At least three calendar days before the date of the public hearing, the sponsors shall:

(a) provide written notice of the public hearing to:

(i) the lieutenant governor for posting on the state's website; and

(ii) each state senator, state representative, and county commission or county council member who is elected in whole or in part from the region where the public hearing will be held; and

(b) publish written notice of the public hearing detailing its time, date, and location:

(i) in at least one newspaper of general circulation in each county in the region where the public hearing will be held; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701.

(3) (a) During the public hearing, the sponsors shall either:

(i) video tape or audio tape the public hearing and, when the hearing is complete, deposit the complete audio or video tape of the meeting with the lieutenant governor; or

(ii) take comprehensive minutes of the public hearing, detailing the names and titles of each speaker and summarizing each speaker's comments.

(b) The lieutenant governor shall make copies of the tapes or minutes available to the public.

Section 82. Section 20A-7-702 (Superseded 01/01/12) is amended to read:

20A-7-702 (Superseded 01/01/12). Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Council of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received; and

(E) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments; and

(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

(l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)(signed) _____Lieutenant Governor"

[~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the date voting commences:~~]

(3) No earlier than 40 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state; or

(ii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 83. Section 20A-7-702 (Effective 01/01/12) is amended to read:

20A-7-702 (Effective 01/01/12). Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) a list of the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;

(E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation; and

(F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;

(vii) for each judge, in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; and

(viii) [~~an Internet~~] a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;

(i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

(l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law.
SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)
(signed) _____
Lieutenant Governor"

[~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the date voting commences:~~]

(3) No earlier than 40 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state; or

(ii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 84. Section 20A-7-706 is amended to read:

20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal arguments.

(1) When the lieutenant governor has received the arguments for and against a measure to be submitted to the voters, the lieutenant governor shall immediately send copies of the arguments in favor of the measure to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor.

(2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.

(3) (a) The rebuttal arguments [~~must~~] shall be filed with the lieutenant governor:

(i) for constitutional amendments and referendum petitions, not later than the day that falls 120 days before the date of the election; and

(ii) for initiatives, not later than August 30.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the rebuttal arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of a rebuttal argument may jointly modify a rebuttal argument after it is submitted if:

(i) they jointly agree that changes to the rebuttal argument must be made to correct spelling or grammatical errors; and

(ii) the rebuttal argument has not yet been submitted for typesetting.

(4) The lieutenant governor shall ensure that:

(a) rebuttal arguments are printed in the same manner as the direct arguments; and

(b) each rebuttal argument follows immediately after the direct argument which it seeks to rebut.

Section 85. Section 20A-9-403 is amended to read:

20A-9-403. Regular primary elections.

(1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular primary election day.

(b) Each registered political party that chooses to use the primary election process to nominate some or all of its candidates shall comply with the requirements of this section.

(2) (a) As a condition for using the state's election system, each registered political party that wishes to participate in the primary election shall:

(i) declare their intent to participate in the primary election;

(ii) identify one or more registered political parties whose members may vote for the registered political party's candidates and whether or not persons identified as unaffiliated with a political party may vote for the registered political party's candidates; and

(iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1 of each even-numbered year.

(b) As a condition for using the state's election system, each registered political party that wishes to participate in the primary election shall:

(i) certify the name and office of all of the registered political party's candidates to the lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

(ii) certify the name and office of each of its county candidates to the county clerks by 5 p.m. on May 13 of each even-numbered year.

(c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall send the county clerks a certified list of the names of all statewide or multicounty candidates that [~~must~~] shall be printed on the primary ballot.

(d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year.

(ii) A registered political party's candidates for President and Vice-President of the United States shall be certified to the lieutenant governor as provided in Subsection 20A-9-202(4).

(e) Each political party shall certify the names of its presidential and vice-presidential candidates and presidential electors to the lieutenant governor's office no later than September 8 of each presidential election year.

(3) The county clerk shall:

(a) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(b) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(c) conduct a lottery to determine the order of the candidates' names on the ballot.

(4) After the county clerk receives the certified list from a registered political party, the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June ____, _____(year), to nominate party candidates for the parties and nonpartisan offices listed on the primary ballot. The polling place for voting precinct ____ is ____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".

(5) (a) Candidates receiving the highest number of votes cast for each office at the regular primary election are nominated by their party or nonpartisan group for that office.

(b) If two or more candidates are to be elected to the office at the regular general election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the regular primary election are the nominees of their party for those positions.

(6) (a) When a tie vote occurs in any primary election for any national, state, or other office that represents more than one county, the governor, lieutenant governor, and attorney general shall, at a public meeting called by the governor and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the governor determines.

(b) When a tie vote occurs in any primary election for any county office, the district court judges of the district in which the county is located shall, at a public meeting called by the judges and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the judges determine.

(7) The expense of providing all ballots, blanks, or other supplies to be used at any primary election provided for by this section, and all expenses necessarily incurred in the preparation for or the conduct of that primary election shall be paid out of the treasury of the county or state, in the same manner as for the regular general elections.

Section 86. Section 20A-11-401 is amended to read:

20A-11-401. Officeholder financial reporting requirements -- Year-end summary report.

(1) (a) Each officeholder shall file a summary report by January 10 of each year.

(b) An officeholder that is required to file a summary report both as an officeholder and as a candidate for office under the requirements of this chapter may file a single summary report as a candidate and an officeholder, provided that the combined report meets the requirements of:

(i) this section; and

(ii) the section that provides the requirements for the summary report [~~that must be~~] filed by the officeholder in the officeholder's capacity of a candidate for office.

(2) (a) Each summary report shall include the following information as of December 31 of the previous year:

(i) the net balance of the last summary report, if any;

(ii) a single figure equal to the total amount of receipts received since the last summary report, if any;

(iii) a single figure equal to the total amount of expenditures made since the last summary report, if any;

(iv) a detailed listing of each contribution and public service assistance received since the last summary report;

(v) for each nonmonetary contribution:

(A) the fair market value of the contribution with that information provided by the contributor; and

(B) a specific description of the contribution;

(vi) a detailed listing of each expenditure made since the last summary report;

(vii) for each nonmonetary expenditure, the fair market value of the expenditure; and

(viii) a net balance for the year consisting of the net balance from the last summary report plus all receipts minus all expenditures.

(b) (i) For all individual contributions or public service assistance of $50 or less, a single aggregate figure may be reported without separate detailed listings.

(ii) Two or more contributions from the same source that have an aggregate total of more than $50 may not be reported in the aggregate, but shall be reported separately.

(c) In preparing the report, all receipts and expenditures shall be reported as of December 31 of the previous year.

(3) The summary report shall contain a paragraph signed by the officeholder certifying that, to the best of the officeholder's knowledge, all receipts and all expenditures have been reported as of December 31 of the last calendar year and that there are no bills or obligations outstanding and unpaid except as set forth in that report.

Section 87. Section 20A-11-1603 is amended to read:

20A-11-1603. Financial disclosure form -- Required when filing for candidacy -- Public availability.

(1) Candidates seeking the following offices shall file a financial disclosure with the filing officer at the time of filing a declaration of candidacy:

(a) state constitutional officer;

(b) state legislator; or

(c) State Board of Education member.

(2) A filing officer [~~shall not~~] may not accept a declaration of candidacy for an office listed in Subsection (1) unless the declaration of candidacy is accompanied by the financial disclosure required by this section.

(3) The financial disclosure form shall contain the same requirements and shall be in the same format as the financial disclosure form described in Section 76-8-109.

(4) The financial disclosure form shall:

(a) be made available for public inspection at the filing officer's place of business;

(b) if the filing officer is an individual other than the lieutenant governor, be provided to the lieutenant governor within five business days of the date of filing and be made publicly available at the Office of the Lieutenant Governor; and

(c) be made publicly available on the Statewide Electronic Voter Information Website administered by the lieutenant governor.

Section 88. Section 20A-14-103 is amended to read:

20A-14-103. State Board of Education members -- When elected -- Qualifications -- Avoiding conflicts of interest.

(1) (a) In 2002 and every four years thereafter, one member each shall be elected from new Districts 2, 3, 5, 6, 9, 10, 14, and 15 to serve a four-year term.

(b) In 2004 and every four years thereafter, one member each shall be elected from new Districts 4, 7, 8, 11, 12, and 13 to serve a four-year term.

(c) (i) Because of the combination of certain former districts, the state school board members elected from old Districts 2 and 4 who will reside in new District 1 may not serve out the term for which they were elected, but shall stand for election in 2002 for a term of office of four years from the realigned district in which each resides.

(ii) If one of the incumbent state school board members from new District 1 indicates in writing to the lieutenant governor that the school board

member will not seek reelection, that incumbent state school board member may serve until January 1, 2003 and the other incumbent state school board member shall serve out the term for which the member was elected, which is until January 1, 2005.

(2) (a) A person seeking election to the state school board [~~must~~] shall have been a resident of the state school board district in which the person is seeking election for at least one year as of the date of the election.

(b) A person who has resided within the state school board district, as the boundaries of the district exist on the date of the election, for one year immediately preceding the date of the election shall be considered to have met the requirements of this Subsection (2).

(3) A member shall:

(a) be and remain a registered voter in the state board district from which the member was elected or appointed; and

(b) maintain the member's primary residence within the state board district from which the member was elected or appointed during the member's term of office.

(4) A member of the State Board of Education may not, during the member's term of office, also serve as an employee of:

(a) the board;

(b) the Utah State Office of Education; or

(c) the Utah State Office of Rehabilitation.

Section 89. Section 20A-14-201 is amended to read:

20A-14-201. Boards of education -- School board districts -- Creation -- Reapportionment.

(1) (a) The county legislative body, for local school districts whose boundaries encompass more than a single municipality, and the municipal legislative body, for school districts contained completely within a municipality, shall divide the local school district into local school board districts as required under Subsection 20A-14-202(1)(a).

(b) The county and municipal legislative bodies shall divide the school district so that the local school board districts are substantially equal in population and are as contiguous and compact as practicable.

(2) (a) County and municipal legislative bodies shall reapportion district boundaries to meet the population, compactness, and contiguity requirements of this section:

(i) at least once every 10 years;

(ii) if a new district is created:

(A) within 45 days after the canvass of an election at which voters approve the creation of a new district; and

(B) at least 60 days before the candidate filing deadline for a school board election;

(iii) whenever districts are consolidated;

(iv) whenever a district loses more than 20% of the population of the entire school district to another district;

(v) whenever a district loses more than 50% of the population of a local school board district to another district;

(vi) whenever a district receives new residents equal to at least 20% of the population of the district at the time of the last reapportionment because of a transfer of territory from another district; and

(vii) whenever it is necessary to increase the membership of a board from five to seven members as a result of changes in student membership under Section 20A-14-202.

(b) If a school district receives territory containing less than 20% of the population of the transferee district at the time of the last reapportionment, the local school board may assign the new territory to one or more existing school board districts.

(3) (a) Reapportionment does not affect the right of any school board member to complete the term for which the member was elected.

(b) (i) After reapportionment, representation in a local school board district shall be determined as provided in this Subsection (3).

(ii) If only one board member whose term extends beyond reapportionment lives within a reapportioned local school board district, that board member shall represent that local school board district.

(iii) (A) If two or more members whose terms extend beyond reapportionment live within a reapportioned local school board district, the members involved shall select one member by lot to represent the local school board district.

(B) The other members shall serve at-large for the remainder of their terms.

(C) The at-large board members shall serve in addition to the designated number of board members for the board in question for the remainder of their terms.

(iv) If there is no board member living within a local school board district whose term extends beyond reapportionment, the seat shall be treated as vacant and filled as provided in this part.

(4) (a) If, before an election affected by reapportionment, the county or municipal legislative body that conducted the reapportionment determines that one or more members [~~must~~] shall be elected to terms of two years to meet this part's requirements for staggered terms, the legislative body shall determine by lot which of the reapportioned local school board districts will elect members to two-year terms and which will elect members to four-year terms.

(b) All subsequent elections are for four-year terms.

(5) Within 10 days after any local school board district boundary change, the county or municipal legislative body making the change shall send an accurate map or plat of the boundary change to the Automated Geographic Reference Center created under Section 63F-1-506.

Section 90. Section 20A-14-202 is amended to read:

20A-14-202. Local boards of education -- Membership -- When elected -- Qualifications -- Avoiding conflicts of interest.

(1) (a) Except as provided in Subsection (1)(b), the board of education of a school district with a student population of up to 24,000 students shall consist of five members.

(b) The board of education of a school district with a student population of more than 10,000 students but fewer than 24,000 students shall increase from five to seven members beginning with the 2004 regular general election.

(c) The board of education of a school district with a student population of 24,000 or more students shall consist of seven members.

(d) Student population is based on the October 1 student count submitted by districts to the State Office of Education.

(e) If the number of members of a local school board is required to change under Subsection (1)(b), the board shall be reapportioned and elections conducted as provided in Sections 20A-14-201 and 20A-14-203.

(f) A school district which now has or increases to a seven-member board shall maintain a seven-member board regardless of subsequent changes in student population.

(g) (i) Members of a local board of education shall be elected at each regular general election.

(ii) Except as provided in Subsection (1)(g)(iii), no more than three members of a local board of education may be elected to a five-member board, nor more than four members elected to a seven-member board, in any election year.

(iii) More than three members of a local board of education may be elected to a five-member board and more than four members elected to a seven-member board in any election year only when required by reapportionment or to fill a vacancy or to implement Subsection (1)(b).

(h) One member of the local board of education shall be elected from each local school board district.

(2) (a) For an election held after the 2008 general election, a person seeking election to a local school board [~~must~~] shall have been a resident of the local school board district in which the person is seeking election for at least one year as of the date of the election.

(b) A person who has resided within the local school board district, as the boundaries of the district exist on the date of the election, for one year immediately preceding the date of the election shall be considered to have met the requirements of this Subsection (2).

(3) A member of a local school board shall:

(a) be and remain a registered voter in the local school board district from which the member is elected or appointed; and

(b) maintain the member's primary residence within the local school board district from which the member is elected or appointed during the member's term of office.

(4) A member of a local school board may not, during the member's term in office, also serve as an employee of that board.

Section 91. Section 22-1-11 is amended to read:

22-1-11. Transactions prior to May 12, 1925, excepted.

The provisions of this chapter [~~shall not~~] do not apply to transactions taking place prior to May 12, 1925.

Section 92. Section 22-3-104 is amended to read:

22-3-104. Trustee's power to adjust.

(1) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or [~~must~~] shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

(2) In deciding whether and to what extent to exercise the power conferred by Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the settlor;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) (i) the assets held in the trust;

(ii) the extent to which [~~they~~] the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

(iii) the extent to which an asset is used by a beneficiary; and

(iv) whether an asset was purchased by the trustee or received from the settlor;

(f) the net amount allocated to income under the other sections of this chapter and the increase or

decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(i) the anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(b) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(e) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(g) if the trustee is a beneficiary of the trust; or

(h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(5) A trustee may release the entire power conferred by Subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (3). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(6) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (1).

Section 93. Section 22-3-202 is amended to read:

22-3-202. Distribution to residuary and remainder beneficiaries.

(1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each

person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Section 94. Section 22-3-302 is amended to read:

22-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(1) A trustee shall allocate an income receipt or disbursement other than one to which Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement [~~must~~] shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins [~~must~~] shall be allocated to principal and the balance [~~must~~] shall be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Section 95. Section 22-3-303 is amended to read:

22-3-303. Apportionment when income interest ends.

(1) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked [~~must~~] shall be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Section 96. Section 22-3-403 is amended to read:

22-3-403. Receipts from entities -- Business and other activities conducted by trustee.

(1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts [~~must~~] shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a trustee may maintain separate accounting records include:

(a) retail, manufacturing, service, and other traditional business activities;

(b) farming;

(c) raising and selling livestock and other animals;

(d) management of rental properties;

(e) extraction of minerals and other natural resources;

(f) timber operations; and

(g) activities to which Section 22-3-414 applies.

Section 97. Section 22-3-405 is amended to read:

22-3-405. Receipts not normally apportioned -- Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, [~~must~~] shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Section 98. Section 22-3-406 is amended to read:

22-3-406. Receipts not normally apportioned -- Obligation to pay money.

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, [~~must~~] shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust [~~must~~] shall be allocated to income.

(3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410, 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

Section 99. Section 22-3-411 is amended to read:

22-3-411. Receipts normally apportioned -- Minerals, water, and other natural resources.

(1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt [~~must~~] shall be allocated to income.

(b) If received from a production payment, a receipt [~~must~~] shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance [~~must~~] shall be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% [~~must~~] shall be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in Subsection (1)(a), (b), or (c), 90% of the net amount received [~~must~~] shall be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable [~~must~~] shall be allocated to income. If the water is not renewable, 90% of the amount [~~must~~] shall be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on May 3, 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals, water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the interest as provided in this chapter.

Section 100. Section 22-3-414 is amended to read:

22-3-414. Receipts normally apportioned -- Derivatives and options.

(1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under Section 22-3-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option [~~must~~] shall be allocated to principal. An amount paid to acquire the option [~~must~~] shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, [~~must~~] shall be allocated to principal.

Section 101. Section 22-3-505 is amended to read:

22-3-505. Income taxes.

(1) A tax required to be paid by a trustee based on receipts allocated to income [~~must~~] shall be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal [~~must~~] shall be paid

from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income [~~must~~] shall be paid:

(a) from income to the extent that receipts from the entity are allocated only to income;

(b) from principal to the extent that receipts from the entity are allocated only to principal;

(c) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) from principal to the extent that the tax exceeds the total receipts from the entity.

(4) After applying Subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Section 102. Section 22-3-506 is amended to read:

22-3-506. Adjustments between principal and income because of taxes.

(1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(a) elections and decisions, other than those described in Subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement [~~must~~] shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced [~~must~~] shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Section 103. Section 22-3-601 is amended to read:

22-3-601. Uniformity of application and construction.

In applying and construing this chapter, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 104. Section 23-13-2 is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Activity regulated under this title" means any act, attempted act, or activity prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

(a) fishing;

(b) hunting;

(c) trapping;

(d) taking;

(e) permitting any dog, falcon, or other domesticated animal to take;

(f) transporting;

(g) possessing;

(h) selling;

(i) wasting;

(j) importing;

(k) exporting;

(l) rearing;

(m) keeping;

(n) utilizing as a commercial venture; and

(o) releasing to the wild.

(2) "Aquatic animal" has the meaning provided in Section 4-37-103.

(3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or amphibians.

(4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

(5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(6) "Big game" means species of hoofed protected wildlife.

(7) "Carcass" means the dead body of an animal or its parts.

(8) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit, or tag.

(9) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(10) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is POST certified as a peace or a special function officer.

(11) "Dedicated hunter program" means a program that provides:

(a) expanded hunting opportunities;

(b) opportunities to participate in projects that are beneficial to wildlife; and

(c) education in hunter ethics and wildlife management principles.

(12) "Division" means the Division of Wildlife Resources.

(13) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual [~~must~~] shall:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(14) "Endangered" means wildlife designated as endangered according to Section 3 of the federal Endangered Species Act of 1973.

(15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

(16) "Feral" means an animal that is normally domesticated but has reverted to the wild.

(17) "Fishing" means to take fish or crayfish by any means.

(18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(19) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(20) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife, including the provision of food, shelter, or transportation, or any combination of these.

(21) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(23) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of the officer's duty.

(24) "Nonresident" means a person who does not qualify as a resident.

(25) "Open season" means the period of time during which protected wildlife may be legally taken.

(26) "Pecuniary gain" means the acquisition of money or something of monetary value.

(27) "Permit" means a document, including a stamp, that grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

(28) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(29) "Possession" means actual or constructive possession.

(30) "Possession limit" means the number of bag limits one individual may legally possess.

(31) (a) "Private fish pond" means a body of water where privately owned, protected aquatic wildlife are propagated or kept for a noncommercial purpose.

(b) "Private fish pond" does not include an aquaculture facility or fee fishing facility.

(32) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and that restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(33) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (3), except as provided in Subsection (34)(b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as provided in Subsection (35)(b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(36) "Released to the wild" means to be turned loose from confinement.

(37) (a) "Resident" means a person who:

(i) has been domiciled in the state for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains Utah residency if that person leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) the person complies with Subsection (37)(a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (37)(a)(ii).

(ii) A copy of the assignment orders [~~must~~] shall be presented to a wildlife division office to verify the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (37)(a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(39) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey, cougar, and bear.

(40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

(42) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

(43) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (43)(a).

(44) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(45) "Trapping" means taking protected wildlife with a trapping device.

(46) "Trophy animal" means an animal described as follows:

(a) deer – a buck with an outside antler measurement of 24 inches or greater;

(b) elk – a bull with six points on at least one side;

(c) bighorn, desert, or rocky mountain sheep – a ram with a curl exceeding half curl;

(d) moose – a bull with at least one antler exceeding five inches in length;

(e) mountain goat – a male or female;

(f) pronghorn antelope – a buck with horns exceeding 14 inches; or

(g) bison – a bull.

(47) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

(48) "Water pollution" means the introduction of matter or thermal energy to waters within this state that:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

(49) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

Section 105. Section 23-13-17 is amended to read:

23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon -- County ordinances -- Permits.

(1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to this section.

(2) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon [~~must~~] shall be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6a-102.

(4) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(5) (a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) (i) A fee may be charged for a spotlighting permit.

(ii) Any permit fee shall be established by the county ordinance.

(iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount to pay for the costs of administering and enforcing the ordinance, provided this use of the permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.

(6) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(7) The requirement that a county ordinance [~~must~~] shall be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or [~~his~~] the person's agent who is lawfully acting to protect [~~his~~] the person's crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in [~~his~~] the agent's official capacity under a memorandum of agreement with the division.

Section 106. Section 23-14-2 is amended to read:

23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum -- Meetings -- Per diem and expenses.

(1) There is created a Wildlife Board which shall consist of seven members appointed by the governor with the consent of the Senate.

(2) (a) In addition to the requirements of Section 79-2-203, the members of the board shall have expertise or experience in at least one of the following areas:

(i) wildlife management or biology;

(ii) habitat management, including range or aquatic;

(iii) business, including knowledge of private land issues; and

(iv) economics, including knowledge of recreational wildlife uses.

(b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at least one member of the Wildlife Board.

(3) (a) The governor shall select each board member from a list of nominees submitted by the nominating committee pursuant to Section 23-14-2.5.

(b) No more than two members shall be from a single wildlife region described in Subsection 23-14-2.6(1).

(c) The governor may request an additional list of at least two nominees from the nominating committee if the initial list of nominees for a given position is unacceptable.

(d) (i) If the governor fails to appoint a board member within 60 days after receipt of the initial or additional list, the nominating committee shall make an interim appointment by majority vote.

(ii) The interim board member shall serve until the matter is resolved by the committee and the governor or until the board member is replaced pursuant to this chapter.

(4) (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a six-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that:

(i) the terms of board members are staggered so that approximately [~~1/~~3] one-third of the board is appointed every two years; and

(ii) members serving from the same region have staggered terms.

(c) If a vacancy occurs, the nominating committee shall submit two names, as provided in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for the unexpired term.

(d) Board members may serve only one term unless:

(i) the member is among the first board members appointed to serve four years or less; or

(ii) the member filled a vacancy under Subsection (4)(c) for four years or less.

(5) (a) The board shall elect a chair and a vice chair from its membership.

(b) Four members of the board shall constitute a quorum.

(c) The director of the Division of Wildlife Resources shall act as secretary to the board but [~~shall not be~~] is not a voting member of the board.

(6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year to expeditiously conduct its business.

(b) Meetings may be called by the chair upon five days notice or upon shorter notice in emergency situations.

(c) Meetings may be held at the Salt Lake City office of the Division of Wildlife Resources or elsewhere as determined by the Wildlife Board.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) The members of the Wildlife Board shall complete an orientation course to assist them in the performance of the duties of their office.

(b) The Department of Natural Resources shall provide the course required under Subsection (8)(a).

Section 107. Section 23-15-2 is amended to read:

23-15-2. Jurisdiction of division over public or private land and waters.

All wildlife within this state, including [~~but not limited to~~] wildlife on public or private land or in public or private waters within this state, shall fall within the jurisdiction of the Division of Wildlife Resources.

Section 108. Section 23-15-9 is amended to read:

23-15-9. Possession or transportation of live aquatic wildlife unlawful except as authorized -- Exceptions.

It is unlawful for any person to possess or transport live protected aquatic wildlife except as provided by this code or the rules and regulations of the Wildlife Board. This section [~~shall not~~] does not apply to tropical and goldfish species intended for exhibition or commercial purposes. Operators of a properly registered private fish pond may transport live aquatic wildlife specified by the Wildlife Board in the operator's certificate of registration.

Section 109. Section 23-16-3 is amended to read:

23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation equipment by big game animals -- Notice to division.

(1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of the damage, request that the division take action to alleviate the depredation problem.

(b) The landowner or lessee shall allow division personnel reasonable access to the property sustaining damage to verify and alleviate the depredation problem.

(2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a), the division shall investigate the situation, and if it appears that depredation by big game animals may continue, the division shall:

(i) remove the big game animals causing depredation; or

(ii) implement a depredation mitigation plan which has been approved, in writing, by the landowner or lessee.

(b) A depredation mitigation plan may provide for any or all of the following:

(i) the scheduling of a depredation hunt;

(ii) issuing permits to the landowners or lessees, to take big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board;

(iii) allowing landowners or lessees to designate recipients who may obtain a mitigation permit to take big game animals on the landowner's or lessee's land during a general or special season hunt authorized by the Wildlife Board; or

(iv) a description of how the division will assess and compensate the landowner or lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

(c) (i) The division shall specify the number and sex of the big game animals that may be taken pursuant to Subsections (2)(b)(ii) and (iii).

(ii) Control efforts shall be directed toward antlerless animals, if possible.

(d) A permit issued for an antlered animal [~~must~~] shall be approved by the division director or the director's designee.

(e) The division and the landowner or lessee shall jointly determine the number of animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain possession.

(f) In determining appropriate remedial action under this Subsection (2), the division shall consider:

(i) the extent of damage experienced or expected; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner association permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(3) Any fee for accessing the owner's or lessee's land shall be determined by the landowner or lessee.

(4) (a) If the landowner or lessee who approved the depredation mitigation plan under Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or lessee may revoke his or her approval of the plan and again request that the division take action pursuant to Subsection (2)(a)(i).

(b) A subsequent request for action provided under Subsection (4)(a) shall be considered to be a new request for purposes of the 72-hour time limit specified in Subsection (2)(a).

(5) (a) The division may enter into a conservation lease with the owner or lessee of private lands for a fee or other remuneration as compensation for depredation.

(b) Any conservation lease entered into under this section shall provide that the claimant may not unreasonably restrict hunting on the land or passage through the land to access public lands for the purpose of hunting, if those actions are necessary to control or mitigate damage by big game.

Section 110. Section 23-16-4 is amended to read:

23-16-4. Compensation for damage to crops, fences, or irrigation equipment -- Limitations -- Appeals.

(1) The division may provide compensation to claimants for damage caused by big game to:

(a) cultivated crops from or on cleared and planted land;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) To be eligible to receive compensation as provided in this section, the claimant shall:

(a) [~~must~~] notify the division of the damage within 72 hours after the damage is discovered; and

(b) allow division personnel reasonable access to the property to verify and alleviate the depredation problem.

(3) (a) The appraisal of the damage shall be made by the claimant and the division as soon after notification as possible.

(b) In determining damage payment, the division and claimant shall consider:

(i) the extent of damage experienced; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner association permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(c) In determining how to assess and compensate for damages to cultivated crops, the division's determination shall be based on the:

(i) full replacement value in the local market of the cultivated crops that actually have been or will be damaged or consumed by big game animals; and

(ii) cost of delivery of a replacement crop to the location of the damaged crop or other location that is not farther from the source of the replacement crop.

(d) If the claimant and the division are unable to agree on a fair and equitable damage payment, they shall designate a third party, consisting of one or more persons familiar with the crops, fences, or irrigation equipment and the type of game animals doing the damage, to appraise the damage.

(4) (a) Notwithstanding Section 63J-1-504, the total amount of compensation that may be provided by the division pursuant to this section and the total cost of fencing materials provided by the division to prevent crop damage may not exceed the legislative appropriation for fencing material and compensation for damaged crops, fences, and irrigation equipment.

(b) (i) Any claim of $1,000 or less may be paid after appraisal of the damage as provided in Subsection (3), unless the claim brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $1,000.

(ii) Any claim for damage to irrigation equipment may be paid after appraisal of the damage as provided in Subsection (3).

(c) (i) Any claim in excess of $1,000, or claim that brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $1,000, shall be treated as follows:

(A) $1,000 may be paid pursuant to the conditions of this section; and

(B) the amount in excess of $1,000 may not be paid until the total amount of the approved claims of all the claimants and expenses for fencing materials for the fiscal year are determined.

(ii) If the total exceeds the amount appropriated by the Legislature pursuant to Subsection (4)(a), claims in excess of $1,000, or any claim that brings the total amount of a claimant's claims in a fiscal year to an amount in excess of $1,000, shall be prorated.

(5) The division may deny or limit compensation if the claimant:

(a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the damage; or

(b) has unreasonably restricted hunting on land under the claimant's control or passage through the land to access public lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing such hunting or access to control or mitigate damage by big game.

(6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of division actions under this section.

(b) Upon the petition of an aggrieved party to a final division action, the Wildlife Board may review the action on the record and issue an order modifying or rescinding the division action.

(c) A qualified hearing examiner may be appointed for purposes of taking evidence and making recommendations for a board order. The board shall consider the recommendations of the examiner in making decisions.

(d) Board review of final agency action and judicial review of final board action shall be governed by Title 63G, Chapter 4, Administrative Procedures Act.

Section 111. Section 23-17-4 is amended to read:

23-17-4. Crop damage by pheasants -- Notice to division.

Whenever pheasants are damaging cultivated crops on cleared and planted land, the owner of such crops shall immediately upon discovery of such damage notify the Division of Wildlife Resources. This notice [~~must~~] shall be made both orally and in writing. Upon being notified of such damage, the Division of Wildlife Resources shall, as far as possible, control such damage.

Section 112. Section 23-17-6 is amended to read:

23-17-6. Commercial hunting area -- Registration -- Requirements for hunters.

(1) (a) Any person desiring to operate a commercial hunting area within this state to permit the releasing and shooting of pen-raised birds may apply to the Wildlife Board for authorization to do so.

(b) The Wildlife Board may issue the applicant a certificate of registration to operate a commercial hunting area in accordance with rules prescribed by the board.

(c) The Wildlife Board may determine the number of commercial hunting areas that may be established in each county of the state.

(2) Any certificate of registration issued under Subsection (1) shall specify the species of birds that the applicant may propagate, keep, and release for shooting on the area covered by the certificate of registration. The applicant may charge a fee for harvesting these birds.

(3)(a) Any person hunting within the state on any commercial hunting area [~~must~~] shall:

(i) be at least 12 years old;

(ii) possess proof of passing a division-approved hunter education course, if the person was born after December 31, 1965; and

(iii) have the permission of the owner or operator of the commercial hunting area.

(b) The operator of a commercial hunting area shall verify that each hunter on the commercial hunting area meets the requirements of Subsections (3)(a)(i) and (3)(a)(ii).

(4) Hunting on commercial hunting areas shall be permitted only during the commercial hunting area season prescribed by the Wildlife Board.

Section 113. Section 23-17-8 is amended to read:

23-17-8. Dog field meets.

It is lawful within the state [~~of Utah~~] to hold dog field meets or trials where dogs are permitted to work in exhibition or contest where the skill of dogs is demonstrated by locating or retrieving birds which have been obtained from a legal source. Before any meet or trial is held, application [~~must~~] shall be made in writing to the Division of Wildlife Resources, which may authorize the meet or trial under rules and regulations promulgated by the Wildlife Board.

Section 114. Section 23-18-5 is amended to read:

23-18-5. Fur dealer and fur dealer's agent -- Definitions -- Certificates of registration required -- Receipts required.

(1) Any person engaging in, carrying on, or conducting, wholly or in part, the business of buying, selling, trading, or dealing, within the state [~~of Utah~~], in the skins or pelts of furbearing mammals shall be deemed a fur dealer within the meaning of this code. All fur dealers [~~must~~] shall secure a fur dealer certificate of registration from the Division of Wildlife Resources, but no certificate of registration shall be required for a licensed trapper or fur farmer selling skins or pelts which [~~he~~] the licensed trapper or fur farmer has lawfully taken, or raised, nor for any person not a fur dealer who purchases any such skins or pelts exclusively for [~~his~~] the person's own use and not for sale.

(2) Any person who is employed by a resident or nonresident fur dealer as a fur buyer, in the field, is deemed a fur dealer's agent. Application for a fur dealer's agent certificate of registration [~~must~~] shall be made by the fur dealer employing the agent, and no agent certificate of registration shall be issued until the necessary fur dealer certificate of registration has been first secured by the employer of the agent.

(3) Receipts [~~must~~] shall be issued by the vendor to the vendee whenever the skins or pelts of furbearing mammals [~~shall~~] change ownership by virtue of sale, exchange, barter or gift; and both the vendor and vendee shall produce this receipt or evidence of legal transaction upon request by the Division of Wildlife Resources or other person authorized to enforce the provisions of this code.

Section 115. Section 23-19-9 is amended to read:

23-19-9. Suspension of license or permit privileges -- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of applying for,

purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, may suspend a person's license or permit privileges if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing officer shall consider in determining:

(i) the type of license or permit privileges to suspend; and

(ii) the duration of the suspension.

(b) The Wildlife Board shall ensure that the guidelines established under Subsection (3)(a) are consistent with Subsections (4), (5), and (6).

(4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a person's license or permit privileges according to Subsection (2) for a period of time not to exceed:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is suspended pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement;

(c) three years for:

(i) a class B misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(d) one year for:

(i) a class C misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor, when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class C misdemeanor, the prosecution of which is suspended according to a diversion agreement.

(5) The hearing officer may double a suspension period established in Subsection (4) for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6) (a) A hearing officer may suspend, according to Subsection (2), a person's license or permit privileges for a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, according to Subsection (2), may run consecutively.

(c) If a hearing officer suspends, according to Subsection (2), license or permit privileges of the type that have been previously suspended by a court, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods may run consecutively.

(7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

(i) the hearing officer determines the person intentionally, knowingly, or recklessly, as defined in Section 76-2-103, violated:

(A) this title;

(B) a rule or order of the Wildlife Board;

(C) the terms of a certificate of registration; or

(D) the terms of a certificate of registration application or agreement; or

(ii) the person, in a court of law:

(A) is convicted of an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration;

(B) pleads guilty or no contest to an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and the plea is held in abeyance in accordance with a plea in abeyance agreement; or

(C) is charged with an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and prosecution of the offense is suspended in accordance with a diversion agreement.

(b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(8) (a) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section.

(b) The director may not appoint a division employee who investigates or enforces wildlife violations.

(9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

(10) (a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect.

(b) Any license possessed or obtained in violation of the order shall be considered invalid.

(c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.

(11) Before suspension under this section, a person [~~must~~] shall be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

(12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing.

(c) The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period or type of suspension.

(13) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

(14) The Wildlife Board may make rules to implement this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 116. Section 23-19-14 is amended to read:

23-19-14. Persons residing in certain institutions authorized to fish without license.

(1) The Division of Wildlife Resources shall permit a person to fish without a license if:

(a) (i) the person resides in:

(A) the Utah State Developmental Center in American Fork;

(B) the state hospital;

(C) a veteran's hospital;

(D) a veteran's nursing home;

(E) a mental health center;

(F) an intermediate care facility for the mentally retarded;

(G) a group home licensed by the Department of Human Services and operated under contract with the Division of Services for People with Disabilities;

(H) a group home or other community-based placement licensed by the Department of Human Services and operated under contract with the Division of Juvenile Justice Services;

(I) a private residential facility for at-risk youth licensed by the Department of Human Services; or

(J) another similar institution approved by the division; or

(ii) the person is a youth who participates in a work camp operated by the Division of Juvenile Justice Services;

(b) the person is properly supervised by a representative of the institution; and

(c) the institution obtains from the division a certificate of registration that specifies:

(i) the date and place where the person will fish; and

(ii) the name of the institution's representative who will supervise the person fishing.

(2) The institution [~~must~~] shall apply for the certificate of registration at least 10 days before the fishing outing.

(3) (a) An institution that receives a certificate of registration authorizing at-risk youth to fish shall provide instruction to the youth on fishing laws and regulations.

(b) The division shall provide educational materials to the institution to assist it in complying with Subsection (3)(a).

Section 117. Section 23-19-17.5 is amended to read:

23-19-17.5. Lifetime hunting and fishing licenses.

(1) Lifetime licensees born after December 31, 1965, [~~must~~] shall be certified under Section 23-19-11 before engaging in hunting.

(2) A lifetime license shall remain valid if the residency of the lifetime licensee changes to another state or country.

(3) (a) A lifetime license may be used in lieu of a hunting or fishing license.

(b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag of the lifetime licensee's choice for one of the following general season deer hunts:

(i) archery;

(ii) rifle; or

(iii) muzzleloader.

(c) A lifetime licensee is subject to each requirement for special hunting and fishing permits and tags, except as provided in Subsections (3)(a) and (b).

(4) The Wildlife Board may adopt rules necessary to carry out the provisions of this section.

Section 118. Section 23-19-38.2 is amended to read:

23-19-38.2. Refunds for armed forces or public health or safety organization members -- Criteria.

(1) A member of the United States Armed Forces or public health or public safety organization who is mobilized or deployed on order in the interest of national defense or emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as provided in Subsection (2):

(a) receive a refund from the division; and

(b) if the person has drawn a permit, have all opportunities to draw that permit in a future draw reinstated.

(2) To qualify, the person or a legal representative [~~must~~] shall:

(a) notify the division within a reasonable amount of time that the person is applying for a refund;

(b) surrender the license, certificate, tag, or permit to the division; and

(c) furnish satisfactory proof to the division that the person:

(i) is a member of:

(A) the United States Armed Forces;

(B) a public health organization; or

(C) a public safety organization; and

(ii) was precluded from using the license, certificate, tag, or permit as a result of being called to active duty.

(3) The Wildlife Board may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this section including allowing retroactive refund to September 11, 2001.

Section 119. Section 23-20-1 is amended to read:

23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.

(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other law enforcement officers.

(2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

(b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.

(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

(iii) Migratory wildfowl may not be sold, but [~~must~~] shall be given to a charitable institution or used for other charitable purposes.

(3) Materials and devices used for the unlawful taking or possessing of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possessing of protected wildlife, the materials and devices shall be subject to criminal or civil forfeiture under the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(4) (a) Conservation officers may seize and impound a vehicle used for the unlawful taking or

possessing of protected wildlife for any of the following purposes:

(i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

(ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search warrant; or

(iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or possessed.

(b) The division shall store any seized vehicle in a public or private garage, state impound lot, or other secured storage facility.

(5) A seized vehicle shall be released to the owner no later than 30 days after the date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person who is charged with committing a felony under this title.

(6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject to criminal or civil forfeiture under the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(b) The owner of a seized vehicle is liable for the payment of any impound fee if [~~he~~] the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a court to be guilty of a violation of this title.

(c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

(i) no charges are filed or all charges are dropped which involve the use of the vehicle for the unlawful taking or possessing of wildlife;

(ii) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty; or

(iii) the owner did not consent to a use of the vehicle which violates this chapter.

Section 120. Section 23-20-9 is amended to read:

23-20-9. Donating protected wildlife.

(1) A person may only donate protected wildlife or their parts to another person at:

(a) the residence of the donor;

(b) the residence of the person receiving protected wildlife or their parts;

(c) a meat locker;

(d) a storage plant;

(e) a meat processing facility; or

(f) a location authorized by the Wildlife Board in rule, proclamation, or order.

(2) A written statement of donation [~~must~~] shall be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor; and

(d) the signature of the donor.

(3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big game animal to another person or organization at any place without a donation slip.

Section 121. Section 23-20-14 is amended to read:

23-20-14. Definitions -- Posted property -- Hunting by permission -- Entry on private land while hunting or fishing -- Violations -- Penalty -- Prohibitions inapplicable to officers -- Promotion of respect for private property.

(1) As used in this section:

[~~(b)~~] (a) "Cultivated land" means land which is readily identifiable as:

(i) land whose soil is loosened or broken up for the raising of crops;

(ii) land used for the raising of crops; or

(iii) pasturage which is artificially irrigated.

[~~(a)~~] (b) "Division" means the Division of Wildlife Resources.

(c) "Permission" means written authorization from the owner or person in charge to enter upon private land that is either cultivated or properly posted, and [~~must~~] shall include:

(i) the signature of the owner or person in charge;

(ii) the name of the person being given permission;

(iii) the appropriate dates; and

(iv) a general description of the property.

(d) "Properly posted" means that "No Trespassing" signs or a minimum of 100 square inches of bright yellow, bright orange, or fluorescent paint are displayed at all corners, fishing streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal fence posts are used, the entire exterior side [~~must~~] shall be painted.

(2) (a) While taking wildlife or engaging in wildlife related activities, a person may not:

(i) without the permission of the owner or person in charge, enter upon privately owned land that is cultivated or properly posted;

(ii) refuse to immediately leave the private land if requested to do so by the owner or person in charge; or

(iii) obstruct any entrance or exit to private property.

(b) "Hunting by permission cards" will be provided to landowners by the division upon request.

(c) A person may not post:

(i) private property [~~he~~] the person does not own or legally control; or

(ii) land that is open to the public as provided by Section 23-21-4.

(3) (a) A person convicted of violating any provision of Subsection (2) may have [~~his~~] the person's license, tag, certificate of registration, or permit, relating to the activity engaged in at the time of the violation, revoked by a hearing officer.

(b) A hearing officer may construe any subsequent conviction which occurs within a five-year period as a flagrant violation and may prohibit the person from obtaining a new license, tag, certificate of registration, or permit for a period of up to five years.

(4) Subsection (2)(a) does not apply to peace or conservation officers in the performance of their duties.

(5) (a) The division shall provide information regarding owners' rights and sportsmen's duties:

(i) to anyone holding licenses, certificates of registration, tags, or permits to take wildlife; and

(ii) by using the public media and other sources.

(b) The restrictions in this section relating to trespassing shall be stated in all hunting and fishing proclamations issued by the Wildlife Board.

(6) Any person who violates any provision of Subsection (2) is guilty of a class B misdemeanor.

Section 122. Section 23-20-20 is amended to read:

23-20-20. Children accompanied by adults while hunting with weapon.

(1) As used in this section:

(a) "Accompanied" means at a distance within which visual and verbal communication is maintained for the purposes of advising and assisting.

(b) (i) "Electronic device" means a mechanism powered by electricity that allows communication between two or more people.

(ii) "Electronic device" includes a mobile telephone or two-way radio.

(c) "Verbal communication" means the conveyance of information through speech that does not involve an electronic device.

(2) A person younger than 14 years old who is hunting with any weapon [~~must~~] shall be accompanied by:

(a) the person's parent or legal guardian; or

(b) a responsible person who is at least 21 years old and who is approved by the person's parent or guardian.

(3) A person younger than 16 years old who is hunting big game with any weapon [~~must~~] shall be accompanied by:

(a) the person's parent or legal guardian; or

(b) a responsible person who is at least 21 years old and who is approved by the person's parent or guardian.

(4) A person who is at least 14 years old but younger than 16 years old [~~must~~] shall be accompanied by a person who is at least 21 years old while hunting wildlife, other than big game, with any weapon.

Section 123. Section 23-20-28 is amended to read:

23-20-28. Search warrants.

(1) A search warrant may be issued by a magistrate to search for any property which may constitute evidence of any violation of the provisions of this code, rules, regulations, or proclamations of the Wildlife Board upon an affidavit of any person.

(2) The search warrant shall be directed to a conservation officer or a peace officer, directing [~~him~~] the officer to search for evidence and to bring it before the magistrate.

(3) A search warrant [~~shall not~~] may not be issued except upon probable cause supported by oath or affirmation, particularly describing the place, person, or thing to be searched for and the person or thing to be seized.

(4) The warrant shall be served in the daytime, unless there is reason to believe that the service of the search warrant is required immediately because a person may:

(a) flee the jurisdiction to avoid prosecution or discovery of a violation noted above;

(b) destroy or conceal evidence of the commission of any violation; or

(c) injure another person or damage property.

(5) The search warrant may be served at night if:

(a) there is reason to believe that a violation may occur at night; or

(b) the evidence of the violation may not be available to the officers serving the warrant during the day.

Section 124. Section 23-20-29 is amended to read:

23-20-29. Interference with hunting prohibited -- Action to recover damages -- Exceptions.

(1) A person is guilty of a class B misdemeanor who intentionally interferes with the right of a person licensed and legally hunting under [~~Title 23,~~] Chapter 19, Licenses, Permits, and Tags to take

wildlife by driving, harassing, or intentionally disturbing any species of wildlife for the purpose of disrupting a legal hunt, trapping, or predator control.

(2) Any directly affected person or the state may bring an action to recover civil damages resulting from a violation of Subsection (1) or a restraining order to prevent a potential violation of Subsection (1).

(3) This section does not apply to incidental interference with a hunt caused by lawful activities including[~~, but not limited to,~~] ranching, mining, and recreation.

Section 125. Section 23-20-30 is amended to read:

23-20-30. Tagging requirements.

(1) The Wildlife Board may make rules that require the carcass of certain species of protected wildlife to be tagged.

(2) The carcass of any species of protected wildlife required to be tagged [~~must~~] shall be tagged before the carcass is moved from or the hunter leaves the site of kill.

(3) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken; and

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(4) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

Section 126. Section 23-20-31 is amended to read:

23-20-31. Requirement to wear hunter orange -- Exceptions.

(1) As used in this section:

(a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle, except as provided in Subsection (1)(a)(ii).

(ii) "Centerfire rifle hunt" does not include:

(A) a bighorn sheep hunt;

(B) a mountain goat hunt;

(C) a bison hunt;

(D) a moose hunt;

(E) a hunt requiring the hunter to possess a statewide conservation permit; or

(F) a hunt requiring the hunter to possess a statewide sportsman permit.

(b) "Statewide conservation permit" means a permit:

(i) issued by the division;

(ii) distributed through a nonprofit organization founded for the purpose of promoting wildlife conservation; and

(iii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

(c) "Statewide sportsman permit" means a permit:

(i) issued by the division through a public draw; and

(ii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

(2) (a) A person shall wear a minimum of 400 square inches of hunter orange material while hunting any species of big game, except as provided in Subsection (3).

(b) Hunter orange material [~~must~~] shall be worn on the head, chest, and back.

(3) A person is not required to wear the hunter orange material described in Subsection (2):

(a) during the following types of hunts, unless a centerfire rifle hunt is in progress in the same area:

(i) archery;

(ii) muzzle-loader;

(iii) mountain goat;

(iv) bighorn sheep;

(v) bison; or

(vi) moose; or

(b) as provided by a rule of the Wildlife Board.

Section 127. Section 23-21-2 is amended to read:

23-21-2. Payments in lieu of property taxes on property purchased by division.

Prior to the purchase of any real property held in private ownership, the Division of Wildlife Resources shall first submit the proposition to the county legislative body in a regular open public meeting in the county where the property is located and shall by contractual agreement with the county legislative body, approved by the executive director of the Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to the county. The division shall, by contractual agreement with the county legislative body in which any property previously acquired from

private ownership and now owned by the division is located, agree to pay annually an amount of money in lieu of wildlife resource fine money, previously paid to the county. Payments provided for in this section will not exceed what the regularly assessed real property taxes would be if the land had remained in private ownership; and these payments [~~shall not~~] may not include any amount for buildings, installations, fixtures, improvements or personal property located upon the land or for those acquired, constructed or placed by the division after it acquires the land.

Section 128. Section 23-22-1 is amended to read:

23-22-1. Cooperative agreements and programs authorized.

(1) The Division of Wildlife Resources may enter into cooperative agreements and programs with other state agencies, federal agencies, states, educational institutions, municipalities, counties, corporations, organized clubs, landowners, associations, and individuals for purposes of wildlife conservation.

(2) Cooperative agreements that are policy in nature [~~must~~] shall be:

(a) approved by the executive director of the Department of Natural Resources; and

(b) reviewed by the Wildlife Board.

Section 129. Section 23-22-3 is amended to read:

23-22-3. Reciprocal agreements with other states.

(1) The Wildlife Board is authorized to enter into reciprocal agreements with other states to:

(a) license and regulate fishing, hunting, and related activities; and

(b) promote and implement wildlife management programs.

(2) Reciprocal agreements [~~must~~] shall be approved by the executive director of the Department of Natural Resources.

Section 130. Section 23-23-11 is amended to read:

23-23-11. Failure to comply with rules and requirements.

A person [~~must~~] shall leave private property within a cooperative wildlife management unit immediately, upon request of a landowner, landowner association operator, or cooperative wildlife management unit agent, if that person:

(1) does not have in [~~his or her~~] that person's possession a cooperative wildlife management unit authorization or permit;

(2) endangers or has endangered human safety;

(3) damages or has damaged private property within a cooperative wildlife management unit; or

(4) fails or has failed to comply with reasonable rules of a landowner association.

Section 131. Section 23-24-1 is amended to read:

23-24-1. Procedure to obtain compensation for livestock damage done by bear, mountain lion, wolf, or eagle.

(1) As used in this section:

(a) "Damage" means injury to or loss of livestock.

(b) "Division" means the Division of Wildlife Resources.

(c) "Livestock" means cattle, sheep, goats, or turkeys.

(d) (i) "Wolf" means the gray wolf Canis lupus.

(ii) "Wolf" does not mean a wolf hybrid with a domestic dog.

(2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market value of the damage.

(ii) The owner may not receive compensation if the livestock is damaged by a wolf within an area where a wolf is endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq.

(b) To obtain this compensation, the owner of the damaged livestock shall notify the division of the damage as soon as possible, but no later than four days after the damage is discovered.

(c) The owner [~~must~~] shall notify the division each time any damage is discovered.

(3) The livestock owner shall file a proof of loss form, provided by the division, no later than 30 days after the original notification of damage was given to the division by the owner.

(4) (a) (i) The division, with the assistance of the Department of Agriculture and Food shall:

(A) within 30 days after the owner files the proof of loss form, either accept or deny the claim for damages; and

(B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the extent money appropriated by the Legislature is available for this purpose.

(ii) Money appropriated from the Wildlife Resources Account may be used to provide compensation for only up to 50% of the fair market value of any damaged livestock.

(iii) Money appropriated from the Wildlife Resources Account may not be used to provide compensation for livestock damaged by an eagle or a wolf.

(iv) The division may not pay any eagle damage claim until the division has paid all accepted mountain lion and bear damage claims for the fiscal year.

(b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a livestock owner unless the owner has filed a completed livestock form and the appropriate fee as outlined in Section 4-23-7 for the immediately preceding and current year.

(c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b), the owner may appeal the decision to a panel consisting of one person selected by the owner, one person selected by the division, and a third person selected by the first two panel members.

(ii) The panel shall decide whether the division should pay all of the claim, a portion of the claim, or none of the claim.

(5) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer and enforce this section.

Section 132. Section 24-1-8 is amended to read:

24-1-8. Criminal procedures.

(1) In cases where an owner is criminally prosecuted for conduct giving rise to forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to the property of a defendant who is acquitted of the offense on which the forfeiture claim is based.

(2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the property, the information or indictment [~~must~~] shall state that the owner's interest in the specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

(3) (a) Upon application of the prosecuting attorney, the court may enter restraining orders or injunctions, or take other reasonable action to preserve for forfeiture under this section any forfeitable property if, after notice to persons known, or discoverable after due diligence, to have an interest in the property and after affording them an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property or prevent its sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against any party against whom the order is to be entered.

(b) A temporary restraining order may be entered ex parte upon application of the prosecuting attorney before or after an information or indictment has been filed with respect to the property, if the prosecuting attorney demonstrates that:

(i) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to forfeiture under this section; and

(ii) provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

(c) The temporary order expires not more than 10 days after entry unless extended for good cause shown or unless the party against whom it is entered consents to an extension. An adversarial hearing concerning an order entered under this section shall be held as soon as practicable and prior to the expiration of the temporary order.

(d) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing under this section.

(4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of the property identified in the information or indictment, if any, that is forfeitable.

(b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

(5) (a) Upon conviction of a person for violating any provision of state law subjecting an owner's property to forfeiture and upon the jury's special verdict that the property is forfeitable, the court shall enter a judgment and order the property forfeited to the state upon the terms stated by the court in its order.

(b) Following the entry of an order declaring property forfeited, the court may, upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state in property ordered forfeited.

(6) (a) After property is ordered forfeited under this section, the seizing agency shall direct the disposition of the property under Section 24-1-17. Any property right or interest not exercisable by or transferable for value to the state expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale held by the seizing agency unless approved by the judge.

(b) The court may stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm or loss to [~~him~~] the defendant.

(7) Except under Subsection (3) or (10), a party claiming an interest in property subject to criminal forfeiture under this section:

(a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and

(b) may not commence an action at law or equity against the state or the county concerning the validity of [~~his~~] the party's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.

(8) The district court of the state which has jurisdiction of a case under this part may enter orders under this section without regard to the location of any property which may be subject to forfeiture under this section, or which has been ordered forfeited under this section.

(9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state, the court may upon application of the prosecuting attorney order that the testimony of any witness relating to the property forfeited be taken by deposition, and that any book, paper, document, record, recording, or other material not privileged shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.

(10) (a) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property as the court may direct. The prosecuting attorney shall also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture.

(b) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the state under this section may, within 30 days of the final publication of notice or [~~his~~] the person's receipt of written notice under Subsection (10)(a), whichever is earlier, petition the court for a hearing to adjudicate the validity of [~~his~~] the person's alleged interest in the property. Any genuine issue of material fact, including issues of standing, is triable to a jury upon demand of any party.

(c) The petition shall be in writing and signed by the petitioner under penalty of perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and any additional facts supporting the petitioner's claim and the relief sought.

(d) The trial or hearing on the petition shall be expedited to the extent practicable. The court may consolidate a trial or hearing on the petition and any petition filed by any other person under this section other than the defendant. The court shall permit the parties to conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

(e) At the trial or hearing, the petitioner may testify and present evidence and witnesses on [~~his~~] the petitioner's own behalf and cross-examine witnesses who appear at the hearing. The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear. In addition to testimony and evidence presented at the trial or hearing, the court may consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

(f) The court shall amend the order of forfeiture in accordance with its determination, if after the trial or hearing, the court or jury determines that the petitioner has established by a preponderance of the evidence that:

(i) the petitioner has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct which gave rise to the forfeiture of the property under this section; or

(ii) the petitioner acquired the right, title or interest in the property in a bona fide transaction for value and, at the time of such acquisition, the petitioner did not know that the property was subject to forfeiture.

(g) Following the court's disposition of all petitions filed under this Subsection (10), or if no petitions are filed following the expiration of the period provided in Subsection (10)(b) for the filing of petitions, the state has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Section 133. Section 25-5-2 is amended to read:

25-5-2. Wills and implied trusts excepted.

Section 25-5-1 [~~shall not~~] may not be construed to affect the power of a testator in the disposition of [~~his~~] the testator's real estate by last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

Section 134. Section 25-6-9 is amended to read:

25-6-9. Good faith transfer.

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3),

or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment [~~must~~] shall be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Section 135. Section 26-1-5 is amended to read:

26-1-5. Rules of department.

(1) Except in areas regulated by statutory committees created by this title, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

(2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.

(3) Every rule adopted by the department pursuant to this section, or a committee established under Section 26-1-7 or 26-1-7.5, shall be subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act and shall become effective at the time and in the manner provided in that act.

(4) If, at the next general session of the Legislature following the filing of a rule with the legislative research director, the Legislature passes a bill disapproving such rule, the rule shall be null and void.

(5) The department or a committee created under Section 26-1-7 or 26-1-7.5, [~~shall not~~] may not adopt a rule identical to a rule disapproved under Subsection (4) of this section, before the beginning of the next general session of the Legislature following the general session at which the rule was disapproved.

Section 136. Section 26-1-7.5 is amended to read:

26-1-7.5. Health advisory council.

(1) (a) There is created the Utah Health Advisory Council, comprised of nine persons appointed by the governor.

(b) The governor shall ensure that:

(i) members of the council:

(A) broadly represent the public interest;

(B) have an interest in or knowledge of public health, environmental health, health planning, health care financing, or health care delivery systems; and

(C) include health professionals;

(ii) the majority of the membership are nonhealth professionals;

(iii) no more than five persons are from the same political party; and

(iv) geography, sex, and ethnicity balance are considered when selecting the members.

(2) (a) Except as required by Subsection (2)(b), members of the council shall be appointed to four-year terms.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(c) Terms of office for subsequent appointments shall commence on July 1 of the year in which the appointment occurs.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) No person shall be appointed to the council for more than two consecutive terms.

(c) The chair of the council shall be appointed by the governor from the membership of the council.

(4) The council shall meet at least quarterly or more frequently as determined necessary by the chair. A quorum for conducting business shall consist of four members of the council.

(5) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The council shall be empowered to advise the department on any subject deemed to be appropriate by the council except that the council [~~shall not~~] may not become involved in administrative matters. The council shall also advise the department as requested by the executive director.

(7) The executive director shall ensure that the council has adequate staff support and shall provide any available information requested by the council necessary for their deliberations. The council shall observe confidential requirements placed on the department in the use of such information.

Section 137. Section 26-1-11 is amended to read:

26-1-11. Executive director -- Power to amend, modify, or rescind committee rules.

The executive director pursuant to the requirements of the Administrative Rulemaking Act may amend, modify, or rescind any rule of any committee created pursuant to Section 26-1-7 if the rule creates a clear present hazard or clear potential hazard to the public health except that the executive director [~~shall not~~] may not act until after discussion with the appropriate committee.

Section 138. Section 26-1-25 is amended to read:

26-1-25. Principal and branch offices of department.

The principal office of the department shall be in Salt Lake County. The department may establish branch offices at other places in the state to furnish comprehensive and effective health programs and to render additional assistance to local health officials. This section [~~shall not~~] does not limit the powers of local health agencies.

Section 139. Section 26-1-32 is amended to read:

26-1-32. Severability of code provisions.

If any provision of this code or the application of any such provision to any person or circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 140. Section 26-3-8 is amended to read:

26-3-8. Disclosure of health data -- Discretion of department.

Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the department, except that the disclosure provided for in Subsection 26-3-7(4) [~~must~~] shall be made when the requirements of that paragraph [~~have been~~] are met.

Section 141. Section 26-4-2 is amended to read:

26-4-2. Definitions.

As used in this chapter:

(1) "Dead body" is as defined in Section 26-2-2.

(2) "Death by violence" means death that resulted by the decedent's exposure to physical, mechanical, or chemical forces, and includes death which appears to have been due to homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or any attempt to commit any of the foregoing offenses.

(3) "Medical examiner" means the state medical examiner appointed pursuant to Section 26-4-4 or a deputy appointed by the medical examiner.

(4) "Regional pathologist" means a trained pathologist licensed to practice medicine and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).

(5) "Sudden death while in apparent good health" means apparently instantaneous death without obvious natural cause, death during or following an unexplained syncope or coma, or death during an acute or unexplained rapidly fatal illness.

(6) "Sudden infant death syndrome" means the death of a child who was thought to be in good health or whose terminal illness appeared to be so mild that the possibility of a fatal outcome was not anticipated.

(7) "Suicide" means death caused by an intentional and voluntary act of a person who understands the physical nature of the act and intends by such act to accomplish self-destruction.

(8) "Unattended death" means the death of a person who has not been seen by a physician within the scope of the physician's professional capacity within 30 days immediately prior to the date of death. This definition [~~shall not~~] does not require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under treatment

by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.

(9) (a) "Unavailable for postmortem investigation" means that a dead body is:

(i) transported out of state;

(ii) buried at sea;

(iii) cremated; or

(iv) otherwise made unavailable to the medical examiner for postmortem investigation or autopsy.

(b) "Unavailable for postmortem investigation" does not include embalming or burial of a dead body pursuant to the requirements of law.

(10) "Within the scope of the decedent's employment" means all acts reasonably necessary or incident to the performance of work, including matters of personal convenience and comfort not in conflict with specific instructions.

Section 142. Section 26-4-9 is amended to read:

26-4-9. Custody of dead body and personal effects -- Examination of scene of death -- Preservation of body -- Autopsies.

(1) Upon notification of a death under Section 26-4-8, the medical examiner shall assume custody of the deceased body, clothing on the body, biological samples taken, and any article on or near the body which may aid [~~him~~] the medical examiner in determining the cause of death except those articles which will assist the investigative agency to proceed without delay with the investigation. In all cases the scene of the event [~~shall not~~] may not be disturbed until authorization is given by the senior ranking peace officer from the law enforcement agency having jurisdiction of the case and conducting the investigation. Where death appears to have occurred under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body, or jurisdiction over the investigation of the death, shall take reasonable precautions to preserve the body and body fluids so that minimum deterioration takes place. The body [~~shall not~~] may not be moved without permission of the medical examiner, district attorney, or county attorney having criminal jurisdiction, or his authorized deputy except in cases of affront to public decency or circumstances where it is not practical to leave the body where found, or in such cases where the cause of death is clearly due to natural causes. The body can under direction of a licensed physician or the medical examiner or his designated representative be moved to a place specified by a funeral director, the attending physician, the medical examiner, or his representative.

(2) In the event the body, where referred to the medical examiner, is moved, no cleansing or embalming of the body shall occur without the permission of the medical examiner. An intentional or knowing violation of this Subsection (2) is a class B misdemeanor.

(3) When the medical examiner assumes lawful custody of a body under Subsection 26-4-7(3) solely because the death was unattended, an autopsy [~~shall not~~] may not be performed unless requested by the district attorney, county attorney having criminal jurisdiction, or law enforcement agency having jurisdiction of the place where the body is found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a licensed physician. The county attorney or district attorney and law enforcement agency having jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In any such case concerning unattended deaths qualifying as exempt from autopsy, a death certificate may be certified by a licensed physician. In this case the physician may be established as the medical examiner's designated representative. Requested autopsies [~~shall not~~] may not be performed when the medical examiner or [~~his~~] the medical examiner's designated representative determines the autopsy to be unnecessary, provided that an autopsy requested by a district or county attorney or law enforcement agency may only be determined to be unnecessary if the cause of death can be ascertained without an autopsy being performed.

Section 143. Section 26-4-12 is amended to read:

26-4-12. Order to exhume body -- Procedure.

(1) In case of any death described in Section 26-4-7, when a body is buried without an investigation by the medical examiner as to the cause and manner of death, it shall be the duty of the medical examiner, upon being advised of the fact, to notify the district attorney or county attorney having criminal jurisdiction where the body is buried or death occurred. Upon notification, the district attorney or county attorney having criminal jurisdiction may file an action in the district court to obtain an order to exhume the body. A district judge may order the body exhumed upon an ex parte hearing.

(2) (a) A body [~~shall not~~] may not be exhumed until notice of the order has been served upon the executor or administrator of the deceased's estate, or if no executor or administrator has been appointed, upon the nearest heir of the deceased, determined as if the deceased had died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then the next heir in succession within the jurisdiction may be served.

(b) The executor, administrator, or heir shall have 24 hours to notify the issuing court of any objection to the order prior to the time the body is exhumed. If no heirs can be located within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which may order that the body be exhumed forthwith.

(c) Notification to the executor, administrator, or heir shall specifically state the nature of the action and the fact that any objection [~~must~~] shall be filed with the issuing court within 24 hours of the time of service.

(d) In the event an heir files an objection, the court shall set hearing on the matter at the earliest possible time and issue an order on the matter immediately at the conclusion of the hearing. Upon the receipt of notice of objection, the court shall immediately notify the county attorney who requested the order, so that the interest of the state may be represented at the hearing.

(e) When there is reason to believe that death occurred in a manner described in Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a motion that the court, upon ex parte hearing, order the body exhumed forthwith and without notice. Upon a showing of exigent circumstances the court may order the body exhumed forthwith and without notice. In any event, upon motion of the district attorney or county attorney having criminal jurisdiction and upon the personal appearance of the medical examiner, the court for good cause may order the body exhumed forthwith and without notice.

(3) An order to exhume a body shall be directed to the medical examiner, commanding [~~him~~] the medical examiner to cause the body to be exhumed, perform the required autopsy, and properly cause the body to be reburied upon completion of the examination.

(4) The examination shall be completed and the complete autopsy report shall be made to the district attorney or county attorney having criminal jurisdiction for any action the attorney considers appropriate. The district attorney or county attorney shall submit the return of the order to exhume within 10 days in the manner prescribed by the issuing court.

Section 144. Section 26-4-20 is amended to read:

26-4-20. Officials not liable for authorized acts.

Except as provided in this chapter, a criminal or civil action [~~shall not~~] may not arise against the county attorney, district attorney, or his deputies, the medical examiner or his deputies, or regional pathologists for authorizing or performing autopsies authorized by this chapter or for any other act authorized by this chapter.

Section 145. Section 26-6-3 is amended to read:

26-6-3. Authority to investigate and control epidemic infections and communicable disease.

(1) The department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health.

(2) (a) As part of the requirements of Subsection (1), the department shall distribute to the public and to health care professionals:

(i) medically accurate information about sexually transmitted diseases that may cause infertility and sterility if left untreated, including descriptions of:

(A) the probable side effects resulting from an untreated sexually transmitted disease, including infertility and sterility;

(B) medically accepted treatment for sexually transmitted diseases;

(C) the medical risks commonly associated with the medical treatment of sexually transmitted diseases; and

(D) suggest screening by a private physician; and

(ii) information about:

(A) public services and agencies available to assist individuals with obtaining treatment for the sexually transmitted disease;

(B) medical assistance benefits that may be available to the individual with the sexually transmitted disease; and

(C) abstinence before marriage and fidelity after marriage being the surest prevention of sexually transmitted disease.

(b) The information required by Subsection (2)(a):

(i) shall be distributed by the department and by local health departments free of charge;

(ii) shall be relevant to the geographic location in which the information is distributed by:

(A) listing addresses and telephone numbers for public clinics and agencies providing services in the geographic area in which the information is distributed; and

(B) providing the information in English as well as other languages that may be appropriate for the geographic area.

(c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written material that includes the information required by this Subsection (2).

(ii) In addition to the written materials required by Subsection (2)(c)(i), the department may distribute the information required by this Subsection (2) by any other methods the department determines is appropriate to educate the public, excluding public schools, including websites, toll free telephone numbers, and the media.

(iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the written pamphlet developed by the department, the written material [~~must~~] shall include either a website, or a 24-hour toll free telephone number that the public may use to obtain that information.

Section 146. Section 26-6-18 is amended to read:

26-6-18. Venereal disease -- Consent of minor to treatment.

(1) A consent to medical care or services by a hospital or public clinic or the performance of

medical care or services by a licensed physician executed by a minor who is or professes to be afflicted with a sexually transmitted disease, shall have the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as a consent given by a person of full legal age and capacity, the infancy of the minor and any contrary provision of law notwithstanding.

(2) The consent of the minor [~~shall not be~~] is not subject to later disaffirmance by reason of minority at the time it was given and the consent of no other person or persons shall be necessary to authorize hospital or clinical care or services to be provided to the minor by a licensed physician.

(3) The provisions of this section shall apply also to minors who profess to be in need of hospital or clinical care and services or medical care or services provided by a physician for suspected sexually transmitted disease, regardless of whether such professed suspicions are subsequently substantiated on a medical basis.

Section 147. Section 26-6-20 is amended to read:

26-6-20. Serological testing of pregnant or recently delivered women.

(1) Every licensed physician and surgeon attending a pregnant or recently delivered woman for conditions relating to her pregnancy shall take or cause to be taken a sample of blood of the woman at the time of first examination or within 10 days thereafter. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis. The provisions of this section [~~shall not~~] do not apply to any female who objects thereto on the grounds that she is a bona fide member of a specified, well recognized religious organization whose teachings are contrary to the tests.

(2) Every other person attending a pregnant or recently delivered woman, who is not permitted by law to take blood samples, shall within 10 days from the time of first attendance cause a sample of blood to be taken by a licensed physician. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.

(3) An approved laboratory is a laboratory approved by the department according to its rules governing the approval of laboratories for the purpose of this title. In submitting the sample to the laboratory the physician shall designate whether it is a prenatal test or a test following recent delivery.

(4) For the purpose of this chapter, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.

(5) The laboratory shall transmit a detailed report of the standard serological test, showing the result thereof to the physician.

Section 148. Section 26-6b-3 is amended to read:

26-6b-3. Order of restriction.

(1) The department having jurisdiction over the location where an individual or a group of individuals who are subject to restriction are found may:

(a) issue a written order of restriction for the individual or group of individuals pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements of this chapter; and

(b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).

(2) (a) A department's determination to issue an order of restriction shall be based upon the totality of circumstances reported to and known by the department, including:

(i) observation;

(ii) information that the department determines is credible and reliable information; and

(iii) knowledge of current public health risks based on medically accepted guidelines as may be established by the Department of Health by administrative rule.

(b) An order of restriction issued by a department [~~must~~] shall:

(i) in the opinion of the public health official, be for the shortest reasonable period of time necessary to protect the public health;

(ii) use the least intrusive method of restriction that, in the opinion of the department, is reasonable based on the totality of circumstances known to the health department issuing the order of restriction;

(iii) be in writing unless the provisions of Subsection (2)(c) apply; and

(iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

(c) (i) A department may issue a verbal order of restriction, without prior notice to the individual or group of individuals if the delay in imposing a written order of restriction would significantly jeopardize the department's ability to prevent or limit:

(A) the transmission of a communicable or possibly communicable disease that poses a threat to public health;

(B) the transmission of an infectious agent or possibly infectious agent that poses a threat to public health;

(C) the exposure or possible exposure of a chemical or biological agent that poses a threat to public health; or

(D) the exposure or transmission of a condition that poses a threat to public health.

(ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

(A) is valid for 24 hours from the time the order of restriction is issued;

(B) may be verbally communicated to the individuals or group of individuals subject to restriction by a first responder;

(C) may be enforced by the first responder until the department is able to establish and maintain the place of restriction; and

(D) may only be continued beyond the initial 24 hours if a written order of restriction is issued pursuant to the provisions of Section 26-6b-3.3.

(3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an individual who is subject to the order of restriction may be required to submit to involuntary examination, quarantine, isolation, or treatment in [~~his~~] the individual's home, a hospital, or any other suitable facility under reasonable conditions prescribed by the department.

(4) The department that issued the order of restriction shall take reasonable measures, including the provision of medical care, as may be necessary to assure proper care related to the reason for the involuntary examination, treatment, isolation, or quarantine of an individual ordered to submit to an order of restriction.

Section 149. Section 26-6b-3.1 is amended to read:

26-6b-3.1. Consent to order of restriction -- Periodic review.

(1) (a) The department shall either seek judicial review of an order of restriction under Sections 26-6b-4 through 26-6b-6, or obtain the consent of an individual subject to an order of restriction.

(b) If the department obtains consent, the consent [~~must~~] shall be in writing and [~~must~~] shall inform the individual or group of individuals:

(i) of the terms and duration of the order of restriction;

(ii) of the importance of complying with the order of restriction to protect the public's health;

(iii) that each individual has the right to agree to the order of restriction, or refuse to agree to the order of restriction and seek a judicial review of the order of restriction;

(iv) that for any individual who consents to the order of restriction:

(A) the order of restriction will not be reviewed by the district court unless the individual withdraws consent to the order of restriction in accordance with Subsection (1)(b)(iv)(B); and

(B) the individual [~~must~~] shall notify the department in writing, with at least five business day's notice, if the individual intends to withdraw consent to the order of restriction; and

(v) that a breach of a consent agreement prior to the end of the order of restriction may subject the individual to an involuntary order of restriction under Section 26-6b-3.2.

(2) (a) The department responsible for the care of an individual who has consented to the order of restriction shall periodically reexamine the reasons upon which the order of restriction was based. This reexamination [~~must~~] shall occur at least once every six months.

(b) (i) If at any time, the department determines that the conditions justifying the order of restriction for either a group or an individual no longer exist, the department shall immediately discharge the individual or group from the order of restriction.

(ii) If the department determines that the conditions justifying the order of restriction continue to exist, the department shall send to the individual a written notice of:

(A) the department's findings, the expected duration of the order of restriction, and the reason for the decision; and

(B) the individual's right to a judicial review of the order of restriction by the district court if requested by the individual.

(iii) Upon request for judicial review by an individual, the department shall:

(A) file a petition in district court within five business days after the individual's request for a judicial review; and

(B) proceed under Sections 26-6b-4 through 26-6b-6.

Section 150. Section 26-7-1 is amended to read:

26-7-1. Identification of major risk factors by department -- Education of public -- Establishment of programs.

The department shall identify the major risk factors contributing to injury, sickness, death, and disability within the state and where it determines that a need exists, educate the public regarding these risk factors, and the department may establish programs to reduce or eliminate these factors except that such programs [~~shall not~~] may not be established if adequate programs exist in the private sector.

Section 151. Section 26-8a-103 is amended to read:

26-8a-103. State Emergency Medical Services Committee -- Membership -- Report -- Expenses.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following 16 members appointed by the governor, at least five of whom [~~must~~] shall reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58,

Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) one representative from a private ambulance provider;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

(4) The committee shall submit a report in a form acceptable to the committee each November at the Law Enforcement and Criminal Justice Interim Committee meeting concerning its:

(a) funding priorities and recommended sources;

(b) closest responder recommendations;

(c) centralized dispatch;

(d) duplication of services and any taxing consequences;

(e) appropriate providers for emergency medical services; and

(f) recommendations and suggested legislation.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) Administrative services for the committee shall be provided by the department.

Section 152. Section 26-8a-203 is amended to read:

26-8a-203. Data collection.

(1) The committee shall specify the information that [~~must~~] shall be collected for the emergency medical services data system established pursuant to Subsection (2).

(2) The department shall establish an emergency medical services data system which shall provide for the collection of information, as defined by the committee, relating to the treatment and care of patients who use or have used the emergency medical services system.

(3) Persons providing emergency medical services shall provide information to the department for the emergency medical services data system established pursuant to Subsection (2).

Section 153. Section 26-8a-207 is amended to read:

26-8a-207. Emergency medical services grant program.

(1) (a) The department shall receive as dedicated credits the amount established in Section 51-9-403. That amount shall be transferred to the department by the Division of Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(b) Funds transferred to the department under this section shall be used for improvement of delivery of emergency medical services and administrative costs as described in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this section shall be made from those dedicated credits.

(c) All funding for the program created by this section shall be nonlapsing.

(2) (a) The department may use the funds transferred to it under Subsection (1):

(i) to provide staff support; and

(ii) for other expenses incurred in:

(A) administration of grant funds; and

(B) other department administrative costs under this chapter.

(b) After funding staff support, administrative expenses, and trauma system development, the department and the committee shall make emergency medical services grants from the remaining funds received as dedicated credits under Subsection (1). A recipient of a grant under this Subsection (2)(b) [~~must~~] shall actively provide emergency medical services within the state.

(c) The department shall distribute not less than 25% of the funds, with the percentage being authorized by a majority vote of the committee, as per capita block grants for use specifically related to the provision of emergency medical services to nonprofit prehospital emergency medical services providers that are either licensed or designated and to emergency medical services that are the primary emergency medical services for a service area. The department shall determine the grant amounts by prorating available funds on a per capita basis by county as described in department rule.

(d) The committee shall award the remaining funds as competitive grants for use specifically related to the provision of emergency medical services based upon rules established by the committee.

Section 154. Section 26-8a-253 is amended to read:

26-8a-253. Statewide trauma registry and quality assurance program.

(1) The department shall:

(a) establish and fund a statewide trauma registry to collect and analyze information on the incidence, severity, causes, and outcomes of trauma;

(b) establish, by rule, the data elements, the medical care providers that [~~must~~] shall report, and the time frame and format for reporting;

(c) use the data collected to:

(i) improve the availability and delivery of prehospital and hospital trauma care;

(ii) assess trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter and applicable department rules; and

(iii) regularly produce and disseminate reports to data providers, state government, and the public; and

(d) support data collection and abstraction by providing:

(i) a data collection system and technical assistance to each hospital that submits data; and

(ii) funding or, at the discretion of the department, personnel for collection and abstraction for each hospital not designated as a trauma center under the standards established pursuant to Section 26-8a-254.

(2) (a) Each hospital shall submit trauma data in accordance with rules established under Subsection (1).

(b) A hospital designated as a trauma center shall submit data as part of the ongoing quality assurance program established in Section 26-8a-252.

(3) The department shall assess:

(a) the effectiveness of the data collected pursuant to Subsection (1); and

(b) the impact of the statewide trauma system on the provision of trauma care.

(4) Data collected under this section shall be subject to [~~Title 26,~~] Chapter 3, Health Statistics.

(5) No person may be held civilly liable for having provided data to the department in accordance with this section.

Section 155. Section 26-8a-405.2 is amended to read:

26-8a-405.2. Selection of provider -- Request for competitive sealed proposal -- Public convenience and necessity.

(1) (a) A political subdivision may contract with an applicant approved under Section 26-8a-404 to provide services for the geographic service area that is approved by the department in accordance with Subsection (2), if:

(i) the political subdivision complies with the provisions of this section and Section 26-8a-405.3 if the contract is for 911 ambulance or paramedic services; or

(ii) the political subdivision complies with Sections 26-8a-405.3 and 26-8a-405.4, if the contract is for non-911 services.

(b) (i) The provisions of this section and Sections 26-8a-405.1, 26-8a-405.3, and 26-8a-405.4 do not require a political subdivision to issue a request for proposal for ambulance or paramedic services or non-911 services.

(ii) If a political subdivision does not contract with an applicant in accordance with this section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply to the

issuance of a license for ambulance or paramedic services in the geographic service area that is within the boundaries of the political subdivision.

(iii) If a political subdivision does not contract with an applicant in accordance with this section, Section 26-8a-405.3 and Section 26-8a-405.4, a license for the non-911 services in the geographic service area that is within the boundaries of the political subdivision may be issued:

(A) under the public convenience and necessity provisions of Sections 26-8a-406 through 26-8a-409; or

(B) by a request for proposal issued by the department under Section 26-8a-405.5.

(c) (i) For purposes of this Subsection (1)(c):

(A) "Fire district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, that:

(I) is located in a county of the first or second class; and

(II) provides fire protection, paramedic, and emergency services.

(B) "Participating municipality" means a city or town whose area is partly or entirely included within a county service area or fire district.

(C) "Participating county" means a county whose unincorporated area is partly or entirely included within a fire district.

(ii) A participating municipality or participating county may as provided in this section and Section 26-8a-405.3, contract with a provider for 911 ambulance or paramedic service.

(iii) If the participating municipality or participating county contracts with a provider for services under this section and Section 26-8a-405.3:

(A) the fire district is not obligated to provide the services that are included in the contract between the participating municipality or the participating county and the provider;

(B) the fire district may impose taxes and obligations within the fire district in the same manner as if the participating municipality or participating county were receiving all services offered by the fire district; and

(C) the participating municipality's and participating county's obligations to the fire district are not diminished.

(2) (a) The political subdivision shall submit the request for proposal and the exclusive geographic service area to be included in a request for proposal issued under Subsections (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The department shall approve the request for proposal and the exclusive geographic service area:

(i) unless the geographic service area creates an orphaned area; and

(ii) in accordance with Subsections (2)(b) and (c).

(b) The exclusive geographic service area may:

(i) include the entire geographic service area that is within the political subdivision's boundaries;

(ii) include islands within or adjacent to other peripheral areas not included in the political subdivision that governs the geographic service area; or

(iii) exclude portions of the geographic service area within the political subdivision's boundaries if another political subdivision or licensed provider agrees to include the excluded area within their license.

(c) The proposed geographic service area for 911 ambulance or paramedic service [~~must~~] shall demonstrate that non-911 ambulance or paramedic service will be provided in the geographic service area, either by the current provider, the applicant, or some other method acceptable to the department. The department may consider the effect of the proposed geographic service area on the costs to the non-911 provider and that provider's ability to provide only non-911 services in the proposed area.

Section 156. Section 26-8a-405.3 is amended to read:

26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited through a request for proposal and the provisions of this section.

(b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).

(c) (i) Notice of the request for proposals shall be published:

(A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or

(B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision [~~must~~] shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and posted by the political subdivision at least 45 days [~~prior to the date~~] before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in Subsection 63G-6-103(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) A political subdivision may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, a political subdivision:

(a) shall apply the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) shall require an applicant to submit the proposal:

(i) based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the political subdivision in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement process required by this section, except as provided in Subsection (5)(c).

(b) The Procurement Appeals Board created in Section 63G-6-807 shall have jurisdiction to review and determine an appeal of an offeror under this section in the same manner as provided in Section 63G-6-810.

(c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).

(ii) The factual determination required by Subsection 63G-6-813(1) shall be based on whether the solicitation or award was made in accordance with the procedures set forth in this section and Section 26-8a-405.2.

(d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section 63G-6-813.

Section 157. Section 26-8a-405.5 is amended to read:

26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) The department shall issue a request for proposal for non-911 services in a geographic service area if the department receives a request

from a political subdivision under Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

(b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be solicited through a request for proposal and the provisions of this section.

(c) (i) Notice of the request for proposals shall be published:

(A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or

(B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the department [~~must~~] shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) The department shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the department may issue addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and posted by the department at least 45 days [~~prior to the date~~] before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) The department may select an applicant approved by the department under Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as defined in Subsection 63G-6-103(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the public, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision responding to the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) The department may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, the department:

(a) shall consider the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) shall require an applicant to submit the proposal:

(i) based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the department in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) A license issued under this section:

(a) is for the exclusive geographic service area approved by the department;

(b) is valid for four years;

(c) is not subject to a request for license from another applicant under the provisions of Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license is revoked under Section 26-8a-504;

(d) is subject to supervision by the department under Sections 26-8a-503 and 26-8a-504; and

(e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections 26-8a-406 through 26-8a-409.

Section 158. Section 26-8a-406 is amended to read:

26-8a-406. Ground ambulance and paramedic licenses -- Parties.

(1) When an applicant approved under Section 26-8a-404 seeks licensure under the provisions of Sections 26-8a-406 through 26-8a-409, the department shall:

(a) issue a notice of agency action to the applicant to commence an informal administrative proceeding;

(b) provide notice of the application to all interested parties; and

(c) publish notice of the application, at the applicant's expense:

(i) once a week for four consecutive weeks, in a newspaper of general circulation in the geographic service area that is the subject of the application; and

(ii) in accordance with Section 45-1-101 for four weeks.

(2) An interested party has 30 days to object to an application.

(3) If an interested party objects, the presiding officer [~~must~~] shall join the interested party as an indispensable party to the proceeding.

(4) The department may join the proceeding as a party to represent the public interest.

(5) Others who may be affected by the grant of a license to the applicant may join the proceeding, if the presiding officer determines that they meet the requirement of legal standing.

Section 159. Section 26-8a-408 is amended to read:

26-8a-408. Criteria for determining public convenience and necessity.

(1) The criteria for determining public convenience and necessity is set forth in Subsections (2) through (6).

(2) Access to emergency medical services [~~must~~] shall be maintained or improved. The officer shall consider the impact on existing services, including the impact on response times, call volumes, populations and exclusive geographic service areas served, and the ability of surrounding licensed providers to service their exclusive geographic service areas. The issuance or amendment of a license may not create an orphaned area.

(3) The quality of service in the area [~~must~~] shall be maintained or improved. The officer shall consider the:

(a) staffing and equipment standards of the current licensed provider and the applicant;

(b) training and certification levels of the current licensed provider's staff and the applicant's staff;

(c) continuing medical education provided by the current licensed provider and the applicant;

(d) levels of care as defined by department rule;

(e) plan of medical control; and

(f) the negative or beneficial impact on the regional emergency medical service system to provide service to the public.

(4) The cost to the public [~~must~~] shall be justified. The officer [~~must~~] shall consider:

(a) the financial solvency of the applicant;

(b) the applicant's ability to provide services within the rates established under Section 26-8a-403;

(c) the applicant's ability to comply with cost reporting requirements;

(d) the cost efficiency of the applicant; and

(e) the cost effect of the application on the public, interested parties, and the emergency medical services system.

(5) Local desires concerning cost, quality, and access [~~must~~] shall be considered. The officer shall assess and consider:

(a) the existing provider's record of providing services and the applicant's record and ability to provide similar or improved services;

(b) locally established emergency medical services goals, including those established in Subsection (7);

(c) comment by local governments on the applicant's business and operations plans;

(d) comment by interested parties that are providers on the impact of the application on the parties' ability to provide emergency medical services;

(e) comment by interested parties that are local governments on the impact of the application on the citizens it represents; and

(f) public comment on any aspect of the application or proposed license.

(6) Other related criteria:

(a) the officer considers necessary; or

(b) established by department rule.

(7) The role of local governments in the licensing of ground ambulance and paramedic providers that serve areas also served by the local governments is

important. The Legislature strongly encourages local governments to establish cost, quality, and access goals for the ground ambulance and paramedic services that serve their areas.

(8) In a formal adjudicative proceeding, the applicant bears the burden of establishing that public convenience and necessity require the approval of the application for all or part of the exclusive geographic service area requested.

Section 160. Section 26-8a-410 is amended to read:

26-8a-410. Local approvals.

(1) Licensed ambulance providers and paramedic providers [~~must~~] shall meet all local zoning and business licensing standards generally applicable to businesses operating within the jurisdiction.

(2) Publicly subsidized providers [~~must~~] shall demonstrate approval of the taxing authority that will provide the subsidy.

(3) A publicly operated service [~~must~~] shall demonstrate that the governing body has approved the provision of services to the entire exclusive geographic service area that is the subject of the license, including those areas that may lie outside the territorial or jurisdictional boundaries of the governing body.

Section 161. Section 26-8a-413 is amended to read:

26-8a-413. License renewals.

(1) A licensed provider desiring to renew its license [~~must~~] shall meet the renewal requirements established by department rule.

(2) The department shall issue a renewal license for a ground ambulance provider or a paramedic provider upon the licensee's application for a renewal and without a public hearing if there has been:

(a) no change in controlling interest in the ownership of the licensee as defined in Section 26-8a-415;

(b) no serious, substantiated public complaints filed with the department against the licensee during the term of the previous license;

(c) no material or substantial change in the basis upon which the license was originally granted;

(d) no reasoned objection from the committee or the department; and

(e) if the applicant was licensed under the provisions of Sections 26-8a-406 through 26-8a-409, no conflicting license application.

(3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the provisions of Sections 26-8a-405.1 and 26-8a-405.2.

(ii) A provider may renew its license if the provisions of Subsections (1), (2)(a) through (d), and this Subsection (3) are met.

(b) (i) The department shall issue a renewal license to a provider upon the provider's application for renewal for one additional four-year term if the political subdivision certifies to the department that the provider has met all of the specifications of the original bid.

(ii) If the political subdivision does not certify to the department that the provider has met all of the specifications of the original bid, the department may not issue a renewal license and the political subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and 26-8a-405.2.

(c) (i) The department shall issue an additional renewal license to a provider who has already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if the department and the political subdivision do not receive, prior to the expiration of the provider's license, written notice from an approved applicant informing the political subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic service.

(ii) If the department and the political subdivision receive the notice in accordance with Subsection (3)(c)(i), the department may not issue a renewal license and the political subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and 26-8a-405.2.

(4) The department shall issue a renewal license for an air ambulance provider upon the licensee's application for renewal and completion of the renewal requirements established by department rule.

Section 162. Section 26-10b-102 is amended to read:

26-10b-102. Department to award grants and contracts -- Applications.

(1) (a) Within appropriations specified by the Legislature for this purpose, the department may make grants to public and nonprofit entities for the cost of operation of providing primary health care services to medically underserved populations.

(b) The department may, as funding permits, contract with community based organizations for the purpose of developing culturally and linguistically appropriate programs and services for low income and medically underserved populations through a pilot program to accomplish one or more of the following:

(i) to educate individuals:

(A) to use private and public health care coverage programs, products, services, and resources in a timely, effective, and responsible manner;

(B) to make prudent use of private and public health care resources;

(C) to pursue preventive health care, health screenings, and disease management; and

(D) to locate health care programs and services;

(ii) to assist individuals to develop:

(A) personal health management;

(B) self-sufficiency in daily care; and

(C) life and disease management skills;

(iii) to support translation of health materials and information;

(iv) to facilitate an individual's access to primary care services and providers, including mental health services; and

(v) to measure and report empirical results of the pilot project.

(2) (a) Grants by the department shall be awarded based on:

(i) applications submitted to the department in the manner and form prescribed by the department; and

(ii) the criteria established in Section 26-10b-103.

(b) The application for a grant under Subsection (2)(a) shall contain:

(i) a requested award amount;

(ii) a budget; and

(iii) a narrative plan of the manner in which the applicant intends to provide the primary health care services described in Subsection 26-10b-101(7).

(c) A contract bid for a service under Subsection (1)(b):

(i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;

(ii) [~~must~~] shall include the information described in Section 26-10b-103; and

(iii) is subject to Subsection (3) of this section.

(3) (a) An applicant under this chapter [~~must~~] shall demonstrate to the department that the applicant will not deny services to a person because of the person's inability to pay for the services.

(b) Subsection (3)(a) does not preclude an applicant from seeking payment from the person receiving services, a third party, or a government agency if:

(i) the applicant is authorized to charge for the services; and

(ii) the person, third party, or government agency is under legal obligation to pay the charges.

(4) The department shall maximize the use of federal matching funds received for services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

Section 163. Section 26-15-8 is amended to read:

26-15-8. Periodic evaluation of local health sanitation programs -- Minimum statewide enforcement standards -- Technical assistance.

(1) The department shall periodically evaluate the sanitation programs of local health departments to determine the levels of sanitation being maintained throughout the state.

(2) (a) The department shall ensure that each local health department's enforcement of the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other places where food or drink is handled meets or exceeds minimum statewide enforcement standards established by the department by administrative rule.

(b) Administrative rules adopted under Subsection (2)(a) shall include at least:

(i) the minimum number of periodic on-site inspections that [~~must~~] shall be conducted by each local health department;

(ii) criteria for conducting additional inspections; and

(iii) standardized methods to be used by local health departments to assess compliance with the minimum rules of sanitation adopted under Section 26-15-2.

(c) The department shall help local health departments comply with the minimum statewide enforcement standards adopted under this Subsection (2) by providing technical assistance.

Section 164. Section 26-18-3 is amended to read:

26-18-3. Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Studies -- Health opportunity accounts.

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:

(i) the standards used by the department for determining eligibility for Medicaid services;

(ii) the services and benefits to be covered by the Medicaid program; and

(iii) reimbursement methodologies for providers under the Medicaid program.

(3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health and Human Services Appropriations Subcommittee when the department:

(i) implements a change in the Medicaid State Plan;

(ii) initiates a new Medicaid waiver;

(iii) initiates an amendment to an existing Medicaid waiver;

(iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or

(v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Health and Human Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) (a) The Department of Human Services shall report to the Legislative Health and Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance with Subsection (4)(b).

(b) The report required by Subsection (4)(a) shall include:

(i) changes made by the division or the department beginning July 1, 2010 that effect the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid services or funding, that relate to care for children and youth in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services;

(ii) the history and impact of the changes under Subsection (4)(b)(i);

(iii) the Department of Human Service's plans for addressing the impact of the changes under Subsection (4)(b)(i); and

(iv) ways to consolidate administrative functions within the Department of Human Services, the Department of Health, the Division of Child and Family Services, and the Division of Juvenile Justice Services to more efficiently meet the needs of children and youth with mental health and substance disorder treatment needs.

(5) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.

(6) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:

(a) the determination of the eligibility of individuals for the program;

(b) recovery of overpayments; and

(c) consistent with Section 26-20-13, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.

(7) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

(c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

(9) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (9)(a) may be applied:

(i) the federal government [~~must~~] shall:

(A) determine that Subsection (9)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department [~~must~~] shall determine that Subsection (9)(a) can be implemented within existing funding.

(10) (a) For purposes of this Subsection (10):

(i) "aged, blind, or disabled" shall be defined by administrative rule; and

(ii) "spend down" means an amount of income in excess of the allowable income standard that [~~must~~] shall be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or disabled is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(11) The department shall conduct internal audits of the Medicaid program, in proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

(12) In order to determine the feasibility of contracting for direct Medicaid providers for primary care services, the department shall:

(a) issue a request for information for direct contracting for primary services that shall provide that a provider shall exclusively serve all Medicaid clients:

(i) in a geographic area;

(ii) for a defined range of primary care services; and

(iii) for a predetermined total contracted amount; and

(b) by February 1, 2011, report to the Health and Human Services Appropriations Subcommittee on the response to the request for information under Subsection (12)(a).

(13) (a) By December 31, 2010, the department shall:

(i) determine the feasibility of implementing a three year patient-centered medical home demonstration project in an area of the state using existing budget funds; and

(ii) report the department's findings and recommendations under Subsection (13)(a)(i) to the Health and Human Services Appropriations Subcommittee.

(b) If the department determines that the medical home demonstration project described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations Subcommittee recommends that the demonstration project be implemented, the department shall:

(i) implement the demonstration project; and

(ii) by December 1, 2012, make recommendations to the Health and Human Services Appropriations Subcommittee regarding the:

(A) continuation of the demonstration project;

(B) expansion of the demonstration project to other areas of the state; and

(C) cost savings incurred by the implementation of the demonstration project.

(14) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (14)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

Section 165. Section 26-18-4 is amended to read:

26-18-4. Department standards for eligibility under Medicaid -- Funds for abortions.

(1) The department may develop standards and administer policies relating to eligibility under the Medicaid program as long as they are consistent with Subsection 26-18-3(8). An applicant receiving Medicaid assistance may be limited to particular types of care or services or to payment of part or all costs of care determined to be medically necessary.

(2) The department [~~shall not~~] may not provide any funds for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is to perform an abortion, unless the life of the mother would be endangered if an abortion were not performed.

(3) Any employee of the department who authorizes payment for an abortion contrary to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of office.

(4) Any person or organization that, under the guise of other medical treatment, provides an abortion under auspices of the Medicaid program is guilty of a third degree felony and subject to forfeiture of license to practice medicine or authority to provide medical services and treatment.

Section 166. Section 26-18-5 is amended to read:

26-18-5. Contracts for provision of medical services -- Federal provisions modifying department rules -- Compliance with Social Security Act.

(1) The department may contract with other public or private agencies to purchase or provide medical services in connection with the programs of the division. Where these programs are used by other state agencies, contracts shall provide that other state agencies transfer the state matching funds to the department in amounts sufficient to satisfy needs of the specified program.

(2) All contracts for the provision or purchase of medical services shall be established on the basis of the state's fiscal year and shall remain uniform during the fiscal year insofar as possible. Contract terms shall include provisions for maintenance, administration, and service costs.

(3) If a federal legislative or executive provision requires modifications or revisions in an eligibility factor established under this chapter as a condition for participation in medical assistance, the department may modify or change its rules as necessary to qualify for participation; providing, the provisions of this section [~~shall not~~] do not apply to department rules governing abortion.

(4) The department shall comply with all pertinent requirements of the Social Security Act and all orders, rules, and regulations adopted thereunder when required as a condition of participation in benefits under the Social Security Act.

Section 167. Section 26-18-10 is amended to read:

26-18-10. Utah Medical Assistance Program -- Policies and standards.

(1) The division shall develop a medical assistance program, which shall be known as the Utah Medical Assistance Program, for low income persons who are not eligible under the state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title XVIII of that act.

(2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical government institutions are not eligible for services provided under this section.

(3) The department shall develop standards and administer policies relating to eligibility requirements, consistent with Subsection 26-18-3(8), for participation in the program, and for payment of medical claims for eligible persons.

(4) The program shall be a payor of last resort. Before assistance is rendered the division shall investigate the availability of the resources of the spouse, father, mother, and adult children of the person making application.

(5) The department shall determine what medically necessary care or services are covered under the program, including duration of care, and method of payment, which may be partial or in full.

(6) The department [~~shall not~~] may not provide public assistance for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is for the performance of an abortion, unless the life of the mother would be endangered if an abortion were not performed.

(7) The department may establish rules to carry out the provisions of this section.

Section 168. Section 26-18-11 is amended to read:

26-18-11. Rural hospitals.

(1) For purposes of this section "rural hospital" means a hospital located outside of a standard metropolitan statistical area, as designated by the United States Bureau of the Census.

(2) For purposes of the Medicaid program and the Utah Medical Assistance Program, the Division of Health Care Financing [~~shall not~~] may not discriminate among rural hospitals on the basis of size.

Section 169. Section 26-18-501 is amended to read:

26-18-501. Definitions.

As used in this part:

(1) "Certified program" means a nursing care facility program with Medicaid certification.

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

(3) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing care facility program as established by division rule.

(4) (a) "Nursing care facility" means the following facilities licensed by the department under Chapter 21, Health Care Facility Licensing and Inspection Act:

(i) skilled nursing homes;

(ii) intermediate care facilities; and

(iii) intermediate care facilities for the mentally retarded.

(b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

(5) "Nursing care facility program" means the personnel, licenses, services, contracts and all other requirements that [~~must~~] shall be met for a nursing care facility to be eligible for Medicaid certification under this part and division rule.

(6) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated.

(7) "Service area" means the boundaries of the distinct geographic area served by a certified program as determined by the division in accordance with this part and division rule.

Section 170. Section 26-18-502 is amended to read:

26-18-502. Purpose -- Medicaid certification of nursing care facilities.

(1) The Legislature finds:

(a) that an oversupply of nursing care facility programs in the state adversely affects the state Medicaid program and the health of the people in the state; and

(b) it is in the best interest of the state to prohibit Medicaid certification of nursing care facility programs, except as authorized by this part.

(2) Medicaid reimbursement of nursing care facility programs is limited to:

(a) the number of nursing care facility programs with Medicaid certification as of May 4, 2004; and

(b) additional nursing care facility programs approved for Medicaid certification under the provisions of Subsection 26-18-503(5).

(3) The division [~~shall not~~] may not:

(a) except as authorized by Section 26-18-503:

(i) process initial applications for Medicaid certification or execute provider agreements with nursing care facility programs; or

(ii) reinstate Medicaid certification for a nursing care facility whose certification expired or was terminated by action of the federal or state government; or

(b) execute a Medicaid provider agreement with a certified program that moves its nursing care facility program to a different physical facility, except as authorized by Subsection 26-18-503(3).

Section 171. Section 26-18-503 is amended to read:

26-18-503. Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.

(1) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:

(i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program;

(ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4);

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and

(iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

(i) is not owned in whole or in part by the previous nursing care facility program; or

(ii) is not a successor in interest of the previous nursing care facility program.

(3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:

(a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;

(b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;

(c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years;

(d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;

(e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and

(f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).

(4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) [~~must~~] shall give written assurances satisfactory to the director or [~~his~~] the director's designee that:

(i) no third party has a legitimate claim to operate the certified program;

(ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and

(iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

(b) If a finding is made under the provisions of Subsection (4)(a)(iii):

(i) the certified program shall immediately surrender its Medicaid certification and comply

with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and

(ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).

(5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional Medicaid certification when requested by a nursing care facility or other interested party if there is insufficient bed capacity with current certified programs in a service area. A determination of insufficient bed capacity shall be based on the nursing care facility or other interested party providing reasonable evidence of an inadequate number of beds in the county or group of counties impacted by the requested Medicaid certification based on:

(i) current demographics which demonstrate nursing care facility occupancy levels of at least 90% for all existing and proposed facilities within a prospective three-year period;

(ii) current nursing care facility occupancy levels of 90%; or

(iii) no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification.

(b) In addition to the requirements of Subsection (5)(a), a nursing care facility program [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can financially support itself at an after tax break-even net income level based on projected occupancy levels.

(c) When making a determination to certify additional beds or an additional nursing care facility program under Subsection (5)(a):

(i) the director shall consider whether the nursing care facility will offer specialized or unique services that are underserved in a service area;

(ii) the director shall consider whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); and

(iii) the director may consider how to add additional capacity to the long-term care delivery system to best meet the needs of Medicaid recipients.

(6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility property reimbursement methodology to:

(a) beginning July 1, 2008, only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:

(i) actual occupancy; or

(ii) (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or

(B) for a rural nursing care facility, 65% of total bed capacity; and

(b) beginning July 1, 2008, not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.

Section 172. Section 26-18-505 is amended to read:

26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of transferor -- Duties of transferee -- Duties of division.

(1) This section provides a method to transfer the license for a Medicaid bed from one nursing care facility program to another entity that is in addition to the authorization to transfer under Section 26-18-503.

(2) (a) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds in accordance with Subsection (2)(b) if:

(i) at the time of the transfer, and with respect to the license for the Medicaid bed that will be transferred, the nursing care facility program that will transfer the Medicaid license meets all applicable regulations for Medicaid certification;

(ii) 30 days prior to the transfer, the nursing care facility program gives a written assurance to the director and to the transferee in accordance with Subsection 26-18-503(4); and

(iii) 30 days prior to the transfer, the nursing care facility program that will transfer the license for a Medicaid bed notifies the division in writing of:

(A) the number of bed licenses that will be transferred;

(B) the date of the transfer; and

(C) the identity and location of the entity receiving the transferred licenses.

(b) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds to:

(i) a nursing care facility program that has the same owner or successor in interest of the same owner;

(ii) a nursing care facility program that has a different owner; or

(iii) an entity that intends to establish a nursing care facility program.

(3) An entity that receives or purchases a license for a Medicaid bed:

(a) may receive a license for a Medicaid bed from more than one nursing care facility program;

(b) within 14 days of seeking Medicaid certification of beds in the nursing care facility

program, give the division notice of the total number of licenses for Medicaid beds that the entity received and who it received the licenses from;

(c) may only seek Medicaid certification for the number of licensed beds in the nursing care facility program equal to the total number of licenses for Medicaid beds received by the entity, multiplied by a conversion factor of .7, and rounded down to the lowest integer;

(d) does not have to demonstrate need for the Medicaid licensed beds under Subsection 26-18-503(5);

(e) [~~must~~] shall meet the standards for Medicaid certification other than those in Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities under Chapter 21, Health Care Facility Licensing and Inspection Act; and

(f) [~~must~~] shall obtain Medicaid certification for the licensed Medicaid beds within three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).

(4) The conversion formula required by Subsection (3)(c) shall be calculated:

(a) when the nursing care facility program applies to the Department for Medicaid certification of the licensed beds; and

(b) based on the total number of licenses for Medicaid beds transferred to the nursing care facility at the time of the request for Medicaid certification.

(5) (a) When the division receives notice of a transfer of a license for a Medicaid bed under Subsection (2)(a)(iii)(A), the division shall reduce the number of licenses for Medicaid beds at the transferring nursing care facility:

(i) equal to the number of licenses transferred; and

(ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

(b) For purposes of Section 26-18-502, the division shall approve Medicaid certification for the receiving entity:

(i) in accordance with the formula established in Subsection (3)(c); and

(ii) if:

(A) the nursing care facility seeks Medicaid certification for the transferred licenses within the time limit required by Subsection (3)(f); and

(B) the nursing care facility program meets other requirements for Medicaid certification under Subsection (3)(e).

(c) A license for a Medicaid bed may not be approved for Medicaid certification without meeting the requirements of Sections 26-18-502 and 26-18-503 if:

(i) the license for a Medicaid bed is transferred under this section but the receiving entity does not obtain Medicaid certification for the licensed bed within the time required by Subsection (3)(f); or

(ii) the license for a Medicaid bed is transferred under this section but the license is no longer eligible for Medicaid certification as a result of the conversion factor established in Subsection (3)(c).

Section 173. Section 26-19-7 is amended to read:

26-19-7. Notice of claim by recipient -- Department response -- Conditions for proceeding -- Collection agreements -- Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for noncompliance.

(1) (a) A recipient may not file a claim, commence an action, or settle, compromise, release, or waive a claim against a third party for recovery of medical costs for an injury, disease, or disability for which the department has provided or has become obligated to provide medical assistance, without the department's written consent as provided in Subsection (2)(b) or (4).

(b) For purposes of Subsection (1)(a), consent may be obtained if:

(i) a recipient who files a claim, or commences an action against a third party notifies the department in accordance with Subsection (1)(d) within 10 days of making [~~his~~] the claim or commencing an action; or

(ii) an attorney, who has been retained by the recipient to file a claim, or commence an action against a third party, notifies the department in accordance with Subsection (1)(d) of the recipient's claim:

(A) within 30 days after being retained by the recipient for that purpose; or

(B) within 30 days from the date the attorney either knew or should have known that the recipient received medical assistance from the department.

(c) Service of the notice of claim to the department shall be made by certified mail, personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure, to the director of the Office of Recovery Services.

(d) The notice of claim shall include the following information:

(i) the name of the recipient;

(ii) the recipient's Social Security number;

(iii) the recipient's date of birth;

(iv) the name of the recipient's attorney if applicable;

(v) the name or names of individuals or entities against whom the recipient is making the claim, if known;

(vi) the name of the third party's insurance carrier, if known;

(vii) the date of the incident giving rise to the claim; and

(viii) a short statement identifying the nature of the recipient's claim.

(2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1), the department shall acknowledge receipt of the notice of the claim to the recipient or the recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the following:

(i) if the department has a claim or lien pursuant to Section 26-19-5 or has become obligated to provide medical assistance; and

(ii) whether the department is denying or granting written consent in accordance with Subsection (1)(a).

(b) The department shall provide the recipient's attorney the opportunity to enter into a collection agreement with the department, with the recipient's consent, unless:

(i) the department, prior to the receipt of the notice of the recipient's claim pursuant to Subsection (1), filed a written claim with the third party, the third party agreed to make payment to the department before the date the department received notice of the recipient's claim, and the agreement is documented in the department's record; or

(ii) there has been a failure by the recipient's attorney to comply with any provision of this section by:

(A) failing to comply with the notice provisions of this section;

(B) failing or refusing to enter into a collection agreement;

(C) failing to comply with the terms of a collection agreement with the department; or

(D) failing to disburse funds owed to the state in accordance with this section.

(c) (i) The collection agreement shall be:

(A) consistent with this section and the attorney's obligation to represent the recipient and represent the state's claim; and

(B) state the terms under which the interests of the department may be represented in an action commenced by the recipient.

(ii) If the recipient's attorney enters into a written collection agreement with the department, or includes the department's claim in the recipient's claim or action pursuant to Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's total recovery and shall pay a proportionate share of the litigation expenses directly related to the action.

(d) The department is not required to enter into a collection agreement with the recipient's attorney for collection of personal injury protection under Subsection 31A-22-302(2).

(3) (a) If the department receives notice pursuant to Subsection (1), and notifies the recipient and the recipient's attorney that the department will not enter into a collection agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or action against the third party if the recipient excludes from the claim:

(i) any medical expenses paid by the department; or

(ii) any medical costs for which the department is obligated to provide medical assistance.

(b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall provide written notice to the third party of the exclusion of the department's claim for expenses under Subsection (3)(a)(i) or (ii).

(4) If the department receives notice pursuant to Subsection (1), and does not respond within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's attorney:

(a) may proceed with the recipient's claim or action against the third party;

(b) may include the state's claim in the recipient's claim or action; and

(c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.

(5) The department has an unconditional right to intervene in an action commenced by a recipient against a third party for the purpose of recovering medical costs for which the department has provided or has become obligated to provide medical assistance.

(6) (a) If the recipient proceeds without complying with the provisions of this section, the department is not bound by any decision, judgment, agreement, settlement, or compromise rendered or made on the claim or in the action.

(b) The department may recover in full from the recipient or any party to which the proceeds were made payable all medical assistance which it has provided and retains its right to commence an independent action against the third party, subject to Subsection 26-19-5(3).

(7) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than five business days after receipt.

(8) (a) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney [~~must~~] shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than 30 days after the funds are placed in the attorney's trust account.

(b) The date by which the funds [~~must~~] shall be remitted to the department may be modified based on agreement between the department and the recipient's attorney.

(c) The department's consent to another date for remittance may not be unreasonably withheld.

(d) If the funds are received by the recipient's attorney, no disbursements shall be made to the recipient or the recipient's attorney until the department's claim has been paid.

(9) A recipient or recipient's attorney who knowingly and intentionally fails to comply with this section is liable to the department for:

(a) the amount of the department's claim or lien pursuant to Subsection (5);

(b) a penalty equal to 10% of the amount of the department's claim; and

(c) [~~attorney's~~] attorney fees and litigation expenses related to recovering the department's claim.

Section 174. Section 26-19-8 is amended to read:

26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not to limit time allowed for recovery.

(1) (a) Subject to Subsection (6), action commenced by the department under this chapter against a health insurance entity [~~must~~] shall be commenced within:

(i) subject to Subsection (7), six years after the day on which the department submits the claim for recovery or payment for the health care item or service upon which the action is based; or

(ii) six months after the date of the last payment for medical assistance, whichever is later.

(b) An action against any other third party, the recipient, or anyone to whom the proceeds are payable [~~must~~] shall be commenced within:

(i) four years after the date of the injury or onset of the illness; or

(ii) six months after the date of the last payment for medical assistance, whichever is later.

(2) The death of the recipient does not abate any right of action established by this chapter.

(3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than 24 months from the date the provider furnishes services or goods to the recipient.

(b) No insurance policy issued or renewed after April 30, 2007, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than that described in Subsection (1)(a).

(4) The provisions of this section do not apply to Section 26-19-13.5.

(5) The provisions of this section supercede any other sections regarding the time limit in which an action [~~must~~] shall be commenced, including Section 75-7-509.

(6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

(b) Subsection (1)(a) does not revive a cause of action that was time-barred on or before April 30, 2007.

(7) An action described in Subsection (1)(a) may not be commenced if the claim for recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after the day on which the health care item or service upon which the claim is based was provided.

Section 175. Section 26-20-3 is amended to read:

26-20-3. False statement or representation relating to medical benefits.

(1) A person [~~shall not~~] may not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.

(2) A person [~~shall not~~] may not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.

(3) A person, who having knowledge of the occurrence of an event affecting [~~his~~] the person's initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf [~~he~~] the person has applied for or is receiving a medical benefit, [~~shall not~~] may not conceal or fail to disclose that event with intent to obtain a medical benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

Section 176. Section 26-20-6 is amended to read:

26-20-6. Conspiracy to defraud prohibited.

A person [~~shall not~~] may not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.

Section 177. Section 26-20-8 is amended to read:

26-20-8. Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this chapter, it [~~shall not be~~] is not necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons acting on his behalf

nor to show that the person had actual notice that the acts by the persons acting on his behalf occurred to establish the fact that a false statement or representation was knowingly made.

Section 178. Section 26-20-9.5 is amended to read:

26-20-9.5. Civil penalties.

(1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:

(a) means that person, with respect to information:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(b) does not require a specific intent to defraud.

(2) Any person who violates this chapter shall, in all cases, in addition to other penalties provided by law, be required to:

(a) make full and complete restitution to the state of all damages that the state sustains because of the person's violation of this chapter;

(b) pay to the state its costs of enforcement of this chapter in that case, including [~~but not limited to~~] the cost of investigators, attorneys, and other public employees, as determined by the state; and

(c) pay to the state a civil penalty equal to:

(i) three times the amount of damages that the state sustains because of the person's violation of this chapter; and

(ii) not less than $5,000 or more than $10,000 for each claim filed or act done in violation of this chapter.

(3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(4) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Section 179. Section 26-20-12 is amended to read:

26-20-12. Violation of other laws.

(1) The provisions of this chapter are:

(a) not exclusive, and the remedies provided for in this chapter are in addition to any other remedies provided for under:

(i) any other applicable law; or

(ii) common law; and

(b) to be liberally construed and applied to:

(i) effectuate the chapter's remedial and deterrent purposes; and

(ii) serve the public interest.

(2) If any provision of this chapter or the application of this chapter to any person or circumstance is held unconstitutional:

(a) the remaining provisions of this chapter [~~shall not be~~] are not affected; and

(b) the application of this chapter to other persons or circumstances [~~shall not be~~] are not affected.

Section 180. Section 26-20-14 is amended to read:

26-20-14. Investigations -- Civil investigative demands.

(1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that:

(a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this chapter;

(b) a person is committing, has committed, or is about to commit a violation of this chapter; or

(c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this chapter.

(2) In taking investigative action, the attorney general may:

(a) require the person to file on a prescribed form a statement in writing, under oath or affirmation describing:

(i) the facts and circumstances concerning the alleged violation of this chapter; and

(ii) other information considered necessary by the attorney general;

(b) examine under oath a person in connection with the alleged violation of this chapter; and

(c) in accordance with Subsections (7) through (18), execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material.

(3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:

(a) by court order for good cause shown;

(b) with the consent of the person who provided the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:

(i) file the statement required by Subsection (2)(a); or

(ii) submit to the examination required by Subsection (2)(b).

(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.

(6) A civil investigative demand [~~must~~] shall:

(a) state the rule or statute under which the alleged violation of this chapter is being investigated;

(b) describe the:

(i) general subject matter of the investigation; and

(ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(c) designate a date within which the documentary material is to be produced; and

(d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.

(8) Service of a civil investigative demand may be made by:

(a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:

(i) at the person's principal place of business in this state; or

(ii) if the person has no place of business in this state, to the person's principal office or place of business.

(9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:

(a) by court order for good cause shown;

(b) with the consent of the person who produced the information;

(c) to an employee of the attorney general or the department;

(d) to an agency of this state, the United States, or another state;

(e) to a special assistant attorney general representing the state in a civil action;

(f) to a political subdivision of this state; or

(g) to a person authorized by the attorney general to receive the information.

(11) (a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.

(b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(12) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be filed in district court [~~and must be filed~~] before the earlier of:

(a) the return date specified in the demand; or

(b) the 20th day after the date the demand is served.

(13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.

(14) (a) A person who has committed a violation of this chapter in relation to the Medicaid program in this state or to any other medical benefit program administered by the state has submitted to the jurisdiction of this state.

(b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.

(15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:

(a) a person fails to comply with a civil investigative demand; or

(b) copying and reproduction of the documentary material demanded:

(i) cannot be satisfactorily accomplished; and

(ii) the person refuses to surrender the documentary material.

(17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.

(18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

Section 181. Section 26-21-9 is amended to read:

26-21-9. Application for license -- Information required -- Public records.

(1) An application for license shall be made to the department in a form prescribed by the department. The application and other documentation requested by the department as part of the application process shall require such information as the committee determines necessary to ensure compliance with established rules.

(2) Information received by the department in reports and inspections shall be public records, except the information [~~shall not~~] may not be disclosed if it directly or indirectly identifies any individual other than the owner or operator of a health facility (unless disclosure is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of personal privacy.

(3) Information received by the department from a health care facility, pertaining to that facility's accreditation by a voluntary accrediting organization, shall be private data except for a summary prepared by the department related to licensure standards.

Section 182. Section 26-21-9.5 is amended to read:

26-21-9.5. Criminal background check and Licensing Information System check.

(1) For purposes of this section:

(a) "Covered employer" means an individual who:

(i) is not a covered health care facility;

(ii) is not a licensed business within the state; and

(iii) is hiring an individual to provide services to an elderly or disabled person in the home of the elderly or disabled person.

(b) "Covered health care facility" means:

(i) home health care agencies;

(ii) hospices;

(iii) nursing care facilities;

(iv) assisted-living facilities;

(v) small health care facilities; and

(vi) end stage renal disease facilities.

(c) "Covered person" includes:

(i) the following people who provide direct patient care:

(A) employees;

(B) volunteers; and

(C) people under contract with the covered health care facility; and

(ii) for residential settings, any individual residing in the home where the assisted living or small health care program is to be licensed who:

(A) is 18 years of age or older; or

(B) is a child between the age of 12 and 17 years of age; however, the identifying information required for a child between the age of 12 and 17 does not include fingerprints.

(2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered health care facility at the time of initial application for a license and license renewal shall:

(a) submit the name and other identifying information of each covered person at the covered facility who:

(i) provides direct care to a patient; and

(ii) has been the subject of a criminal background check within the preceding three-year period by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which may include fingerprints, of each covered person at the covered facility who has not been the subject of a criminal background check in accordance with Subsection (2)(a)(ii).

(3) (a) The department shall forward the information received under Subsection (2)(b) or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of Public Safety for processing to determine whether the individual has been convicted of any crime.

(b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

The individual or licensee is responsible for the cost of the fingerprinting and national criminal history check.

(4) The department may determine whether:

(a) an individual whose name and other identifying information has been submitted pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing Information System described in Section 62A-4a-1006 or has a substantiated finding by a court of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a possible perpetrator of child abuse or neglect is relevant to the employment activities of that individual;

(b) an individual whose name and other identifying information has been submitted pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or who is residing in a residential home that is a facility licensed to provide direct care to disabled or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing in accordance with Subsection (5) the database created in Section 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the employment activities or residence of that person; or

(c) an individual whose name or other identifying information has been submitted pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor if:

(i) the individual is under the age of 28 years; or

(ii) the individual is over the age of 28 and has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor.

(5) (a) The department shall:

(i) designate persons within the department to access:

(A) the Licensing Information System described in Section 62A-4a-1006;

(B) court records under Subsection 78A-6-323(6);

(C) the database described in Subsection (4)(b); and

(D) juvenile court records as permitted by Subsection (4)(c); and

(ii) adopt measures to:

(A) protect the security of the Licensing Information System, the court records, and the database; and

(B) strictly limit access to the Licensing Information System, the court records, and the database to those designated under Subsection (5)(a)(i).

(b) Those designated under Subsection (5)(a)(i) shall receive training from the Department of Human Services with respect to:

(i) accessing the Licensing Information System, the court records, and the database;

(ii) maintaining strict security; and

(iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(c) Those designated under Subsection (5)(a)(i):

(i) are the only ones in the department with the authority to access the Licensing Information System, the court records, and database; and

(ii) may only access the Licensing Information System, the court records, and the database for the purpose of licensing and in accordance with the provisions of Subsection (4).

(6) (a) Within 10 days of initially hiring a covered individual, a covered health care facility shall submit the covered individual's information to the department in accordance with Subsection (2).

(b) (i) Prior to, or within 10 days of initially hiring an individual to provide care to an elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered employer may submit the employed individual's information to the department.

(ii) The department shall:

(A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse, neglect, or exploitation of a minor or an elderly adult; and

(B) in accordance with Subsection (9), inform the covered employer of the department's findings.

(c) A covered employer:

(i) [~~must~~] shall certify to the department that the covered employer intends to hire, or has hired, the individual whose information the covered employer has submitted to the department for the purpose of providing care to an elderly adult or a disabled person in the home of the elderly adult or disabled person;

(ii) [~~must~~] shall pay the reasonable fees established by the department under Subsection (8); and

(iii) commits an infraction if the covered employer intentionally misrepresents any fact certified under Subsection (6)(c)(i).

(7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person who has been convicted of a criminal offense, or a person described in Subsection (4), may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal conviction or substantiated finding and its relation to patient care.

(8) The department may, in accordance with Section 26-1-6, assess reasonable fees for a criminal background check processed pursuant to this section.

(9) The department may inform the covered health care facility or a covered employer of information discovered under Subsection (4) with respect to a covered individual, or an individual whose name is submitted by a covered employer.

(10) (a) A covered health care facility is not civilly liable for submitting information to the department as required by this section.

(b) A covered employer is not civilly liable for submitting information to the department as permitted by this section if the covered employer:

(i) complies with Subsection (6)(c)(i); and

(ii) does not use the information obtained about an individual under this section for any purpose other than hiring decisions directly related to the care of the elderly adult or disabled person.

Section 183. Section 26-23-7 is amended to read:

26-23-7. Application of enforcement procedures and penalties.

Enforcement procedures and penalties provided in this chapter [~~shall not~~] do not apply to other chapters in this title which provide for specific enforcement procedures and penalties.

Section 184. Section 26-23-10 is amended to read:

26-23-10. Religious exemptions from code -- Regulation of state-licensed healing system practice unaffected by code.

(1) [~~Nothing~~] (a) Except as provided in Subsection (1)(b), nothing in this code shall be construed to compel any person to submit to any medical or dental examination or treatment under the authority of this code when such person, or the parent or guardian of any such person objects to such examination or treatment on religious grounds, or to permit any discrimination against such person on account of such objection[~~; provided, that~~].

(b) An exemption from medical or dental examination [~~shall not~~], described in Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect a substantial menace to the health of other persons exposed to contact with the unexamined person.

(2) Nothing in this code shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination, provided the statutes and regulations on sanitation are complied with.

(3) Nothing in this code shall be construed or used to amend any statute now in force pertaining to the scope of practice of any state-licensed healing system.

Section 185. Section 26-23b-104 is amended to read:

26-23b-104. Authorization to report.

(1) A health care provider is authorized to report to the department any case of a reportable emergency illness or health condition in any person when:

(a) the health care provider knows of a confirmed case; or

(b) the health care provider believes, based on [~~his~~] the health care provider's professional judgment that a person likely harbors a reportable emergency illness or health condition.

(2) A report pursuant to this section shall include, if known:

(a) the name of the facility submitting the report;

(b) a patient identifier that allows linkage with the patient's record for follow-up investigation if needed;

(c) the date and time of visit;

(d) the patient's age and sex;

(e) the zip code of the patient's residence;

(f) the reportable illness or condition detected or suspected;

(g) diagnostic information and, if available, diagnostic codes assigned to the visit; and

(h) whether the patient was admitted to the hospital.

(3) (a) If the department determines that a public health emergency exists, the department may, with the concurrence of the governor and the executive director or in the absence of the executive director, [~~his~~] the executive director's designee, issue a public health emergency order and mandate reporting under this section for a limited reasonable period of time, as necessary to respond to the public health emergency.

(b) The department may not mandate reporting under this subsection for more than 90 days. If more than 90 days is needed to abate the public health emergency declared under Subsection (3)(a), the department [~~must~~] shall obtain the concurrence of the governor to extend the period of time beyond 90 days.

(4) (a) Unless the provisions of Subsection (3) apply, a health care provider is not subject to penalties for failing to submit a report under this section.

(b) If the provisions of Subsection (3) apply, a health care provider is subject to the penalties of Subsection 26-23b-103(3) for failure to make a report under this section.

Section 186. Section 26-25-5 is amended to read:

26-25-5. Violation of chapter a misdemeanor -- Civil liability.

(1) Any use, release or publication, negligent or otherwise, contrary to the provisions of this chapter [~~shall be~~] is a class B misdemeanor.

(2) Subsection (1) [~~shall not~~] does not relieve the person or organization responsible for such use, release, or publication from civil liability.

Section 187. Section 26-28-105 is amended to read:

26-28-105. Manner of making anatomical gift before donor's death.

(1) A donor may make an anatomical gift:

(a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver license or identification card;

(b) in a will;

(c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) as provided in Subsection (2).

(2) A donor or other person authorized to make an anatomical gift under Section 26-28-104 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in Subsection (2)(a).

(3) Revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Section 188. Section 26-28-106 is amended to read:

26-28-106. Amending or revoking anatomical gift before donor's death.

(1) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:

(a) a record signed by:

(i) the donor;

(ii) the other person; or

(iii) subject to Subsection (2), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to Subsection (1)(a)(iii) [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in Subsection (1)(a).

(3) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (1).

Section 189. Section 26-28-107 is amended to read:

26-28-107. Refusal to make anatomical gift -- Effect of refusal.

(1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) a record signed by:

(i) the individual; or

(ii) subject to Subsection (2), another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to Subsection (1)(a)(ii) [~~must~~] shall:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) state that it has been signed and witnessed as provided in Subsection (1)(a).

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) in the manner provided in Subsection (1) for making a refusal;

(b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is inconsistent with the refusal; or

(c) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Section 190. Section 26-28-111 is amended to read:

26-28-111. Persons that may receive anatomical gift -- Purpose of anatomical gift.

(1) An anatomical gift may be made to the following persons named in the document of gift:

(a) a hospital, accredited medical school, dental school, college, university, organ procurement organization, or other appropriate person, for research or education;

(b) subject to Subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(2) If an anatomical gift to an individual under Subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with Subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of Subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift [~~must~~] shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).

(7) For purposes of Subsections (2), (5), and (7) the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of this Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects the allocation of organs for transplantation or therapy.

Section 191. Section 26-28-114 is amended to read:

26-28-114. Rights and duties of procurement organization and others.

(1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization [~~must~~] shall be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 26-28-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under Subsection (3) or (4) may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under Subsection (1), a procurement organization shall make a reasonable search for any person listed in Section 26-28-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person to which a part passes under Section 26-28-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Section 192. Section 26-28-120 is amended to read:

26-28-120. Donor registry.

(1) The Department of Public Safety may establish or contract for the establishment of a donor registry.

(2) The Driver License Division of the Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(3) A donor registry [~~must~~] shall:

(a) allow a donor or other person authorized under Section 26-28-104 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(b) be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a 24-hour basis.

(4) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(5) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry [~~must~~] shall comply with Subsections (3) and (4).

Section 193. Section 26-28-121 is amended to read:

26-28-121. Effect of anatomical gift on advance health care directive.

(1) As used in this section:

(a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or if no declaration or directive exists or the agent is not reasonably available, another person authorized by a law other than this chapter to make a health care decision on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict [~~must~~] shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end of life care.

Section 194. Section 26-28-124 is amended to read:

26-28-124. Uniformity of application and construction.

In applying and construing this uniform act, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 195. Section 26-31-1 is amended to read:

26-31-1. Procurement and use of blood, plasma, products, and derivatives a service and not a sale.

The procurement, processing, distribution, or use of whole human blood, plasma, blood products, and blood derivatives for the purpose of injecting or transfusing them into the human body together with the process of injecting or transfusing the same shall be construed to be the rendition of a service by every person participating therein and [~~shall not~~] may not be construed to be a sale.

Section 196. Section 26-33a-104 is amended to read:

26-33a-104. Purpose, powers, and duties of the committee.

(1) The purpose of the committee is to direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues.

(2) The committee shall:

(a) develop and adopt by rule, following public hearing and comment, a health data plan that shall among its elements:

(i) identify the key health care issues, questions, and problems amenable to resolution or improvement through better data, more extensive or careful analysis, or improved dissemination of health data;

(ii) document existing health data activities in the state to collect, organize, or make available types of data pertinent to the needs identified in Subsection (2)(a)(i);

(iii) describe and prioritize the actions suitable for the committee to take in response to the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of needed data, and to encourage improvements in existing data collection, interpretation, and reporting activities, and indicate how those actions relate to the activities identified under Subsection (2)(a)(ii);

(iv) detail the types of data needed for the committee's work, the intended data suppliers, and the form in which such data are to be supplied, noting the consideration given to the potential alternative sources and forms of such data and to the estimated cost to the individual suppliers as well as to the department of acquiring these data in the proposed manner; the plan shall reasonably demonstrate that the committee has attempted to maximize cost-effectiveness in the data acquisition approaches selected;

(v) describe the types and methods of validation to be performed to assure data validity and reliability;

(vi) explain the intended uses of and expected benefits to be derived from the data specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis methods; the benefits described [~~must~~] shall demonstrably relate to one or more of the following:

(A) promoting quality health care[~~,~~];

(B) managing health care costs[~~,~~]; or

(C) improving access to health care services;

(vii) describe the expected processes for interpretation and analysis of the data flowing to the committee; noting specifically the types of expertise and participation to be sought in those processes; and

(viii) describe the types of reports to be made available by the committee and the intended audiences and uses;

(b) have the authority to collect, validate, analyze, and present health data in accordance with the plan while protecting individual privacy through the use of a control number as the health data identifier;

(c) evaluate existing identification coding methods and, if necessary, require by rule that health data suppliers use a uniform system for identification of patients, health care facilities, and health care providers on health data they submit under this chapter;

(d) report biennially to the governor and the Legislature on how the committee is meeting its responsibilities under this chapter; and

(e) advise, consult, contract, and cooperate with any corporation, association, or other entity for the collection, analysis, processing, or reporting of health data identified by control number only in accordance with the plan.

(3) The committee may adopt rules to carry out the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Except for data collection, analysis, and validation functions described in this section, nothing in this chapter shall be construed to authorize or permit the committee to perform regulatory functions which are delegated by law to other agencies of the state or federal governments or to perform quality assurance or medical record audit functions that health care facilities, health care providers, or third party payors are required to conduct to comply with federal or state law. The committee [~~shall not~~] may not recommend or determine whether a health care provider, health care facility, third party payor, or self-funded employer is in compliance with federal or state laws including [~~but not limited to~~] federal or state licensure, insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

(5) Nothing in this chapter shall be construed to require a data supplier to supply health data identifying a patient by name or describing detail on a patient beyond that needed to achieve the approved purposes included in the plan.

(6) No request for health data shall be made of health care providers and other data suppliers until a plan for the use of such health data has been adopted.

(7) If a proposed request for health data imposes unreasonable costs on a data supplier, due consideration shall be given by the committee to altering the request. If the request is not altered, the committee shall pay the costs incurred by the data supplier associated with satisfying the request that are demonstrated by the data supplier to be unreasonable.

(8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may require any data supplier to submit fee schedules, maximum allowable costs, area prevailing costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other specific arrangements for reimbursement to a health care provider.

(9) The committee [~~shall not~~] may not publish any health data collected under Subsection (8) [~~which~~] that would disclose specific terms of contracts, discounts, or fixed reimbursement arrangements, or other specific reimbursement arrangements between an individual provider and a specific payer.

(10) Nothing in Subsection (8) shall prevent the committee from requiring the submission of health data on the reimbursements actually made to health care providers from any source of payment, including consumers.

Section 197. Section 26-33a-106.5 is amended to read:

26-33a-106.5. Comparative analyses.

(1) The committee may publish compilations or reports that compare and identify health care providers or data suppliers from the data it collects under this chapter or from any other source.

(2) (a) The committee shall publish compilations or reports from the data it collects under this chapter or from any other source which:

(i) contain the information described in Subsection (2)(b); and

(ii) compare and identify by name at least a majority of the health care facilities and institutions in the state.

(b) The report required by this Subsection (2) shall:

(i) be published at least annually; and

(ii) contain comparisons based on at least the following factors:

(A) nationally recognized quality standards;

(B) charges; and

(C) nationally recognized patient safety standards.

(3) The committee may contract with a private, independent analyst to evaluate the standard comparative reports of the committee that identify, compare, or rank the performance of data suppliers by name. The evaluation shall include a validation of statistical methodologies, limitations, appropriateness of use, and comparisons using standard health services research practice. The analyst [~~must~~] shall be experienced in analyzing large databases from multiple data suppliers and in evaluating health care issues of cost, quality, and access. The results of the analyst's evaluation [~~must~~] shall be released to the public before the standard comparative analysis upon which it is based may be published by the committee.

(4) The committee shall adopt by rule a timetable for the collection and analysis of data from multiple types of data suppliers.

(5) The comparative analysis required under Subsection (2) shall be available free of charge and easily accessible to the public.

Section 198. Section 26-33a-111 is amended to read:

26-33a-111. Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this chapter [~~shall not be~~] are not subject to subpoena or similar compulsory process in any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to identifiable health data under the provisions of this chapter be compelled to testify with regard to such health data, except that data pertaining to a party in litigation may be subject to subpoena or similar compulsory process in an action brought by or on behalf of such individual to enforce any liability arising under this chapter.

Section 199. Section 26-34-2 is amended to read:

26-34-2. Definition of death -- Determination of death.

(1) An individual is dead if the individual has sustained either:

(a) irreversible cessation of circulatory and respiratory functions; or

(b) irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death [~~must~~] shall be made in accordance with accepted medical standards.

Section 200. Section 26-35a-107 is amended to read:

26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.

If federal law or regulation prohibits the money in the Nursing Care Facilities Account from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program [~~must~~] shall be changed as follows:

(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or

(2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities Account, to the rates provided for by the Legislature or the department.

Section 201. Section 26-36a-102 is amended to read:

26-36a-102. Legislative findings.

(1) The Legislature finds that there is an important state purpose to improve the access of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state revenues and increases in enrollment under the Utah Medicaid program.

(2) The Legislature finds that in order to improve this access to those persons described in Subsection (1):

(a) the rates paid to Utah hospitals [~~must~~] shall be adequate to encourage and support improved access; and

(b) adequate funding [~~must~~] shall be provided to increase the rates paid to Utah hospitals providing services pursuant to the Utah Medicaid program.

Section 202. Section 26-36a-203 is amended to read:

26-36a-203. Calculation of assessment.

(1) The division shall calculate the inpatient upper payment limit gap for hospitals for each state fiscal year.

(2) (a) An annual assessment is payable on a quarterly basis for each hospital in an amount calculated at a uniform assessment rate for each hospital discharge, in accordance with this section.

(b) The uniform assessment rate shall be determined using the total number of hospital discharges for assessed hospitals divided into the total non-federal portion of the upper payment limit gap.

(c) Any quarterly changes to the uniform assessment rate [~~must~~] shall be applied uniformly to all assessed hospitals.

(d) (i) Except as provided in Subsection (2)(d)(ii), the annual uniform assessment rate may not generate more than the non-federal share of the annual upper payment limit gap for the fiscal year.

(ii) (A) For fiscal year 2010 the assessment may not generate more than the non-federal share of the annual upper payment limit gap for the fiscal year.

(B) For fiscal year 2010-11 the department may generate an additional amount from the assessment imposed under Subsection (2)(d)(i) in the amount of $2,000,000 which shall be used by the department and the division as follows:

(I) $1,000,000 to offset Medicaid mandatory expenditures; and

(II) $1,000,000 to offset the reduction in hospital outpatient fees in the state program.

(C) For fiscal years 2011-12 and 2012-13 the department may generate an additional amount from the assessment imposed under Subsection (2)(d)(i) in the amount of $1,000,000 to offset Medicaid mandatory expenditures.

(3) (a) For state fiscal years 2010 and 2011, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file as of April 1, 2009 for hospital fiscal years ending between October 1, 2007, and September 30, 2008.

(b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated March 31, 2009:

(i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report with a fiscal year end between October 1, 2007, and September 30, 2008; and

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(b)(i).

(c) If a hospital started operations after the due date for a 2007 Medicare Cost Report:

(i) the hospital shall submit to the division a copy of the hospital's most recent complete year Medicare Cost Report; and

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(c)(i).

(d) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:

(i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(d)(i); and

(iii) the failure to submit discharge information under Subsections (3)(d)(i) and (ii) shall result in an audit of the hospital's records by the department and the imposition of a penalty equal to 5% of the calculated assessment.

(4) (a) For state fiscal year 2012 and 2013, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file as of:

(i) for state fiscal year 2012, September 30, 2010, for hospital fiscal years ending between October 1, 2008, and September 30, 2009; and

(ii) for state fiscal year 2013, September 30, 2011, for hospital fiscal years ending between October 1, 2009, and September 30, 2010.

(b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file:

(i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report applicable to the assessment year; and

(ii) the division shall determine the hospital's discharges.

(c) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:

(i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;

(ii) the division shall determine the hospital's discharges from the information submitted under Subsection (4)(c)(i); and

(iii) the failure to submit discharge information shall result in an audit of the hospital's records and a penalty equal to 5% of the calculated assessment.

(5) Except as provided in Subsection (6), if a hospital is owned by an organization that owns more than one hospital in the state:

(a) the assessment for each hospital shall be separately calculated by the department; and

(b) each separate hospital shall pay the assessment imposed by this chapter.

(6) Notwithstanding the requirement of Subsection (5), if multiple hospitals use the same Medicaid provider number:

(a) the department shall calculate the assessment in the aggregate for the hospitals using the same Medicaid provider number; and

(b) the hospitals may pay the assessment in the aggregate.

(7) (a) The assessment formula imposed by this section, and the inpatient access payments under Section 26-36a-205, shall be adjusted in accordance with Subsection (7)(b) if a hospital, for any reason, does not meet the definition of a hospital subject to the assessment under Section 26-36a-103 for the entire fiscal year.

(b) The department shall adjust the assessment payable to the department under this chapter for a hospital that is not subject to the assessment for an entire fiscal year by multiplying the annual assessment calculated under Subsection (3) or (4) by a fraction, the numerator of which is the number of days during the year that the hospital operated, and the denominator of which is 365.

(c) A hospital described in Subsection (7)(a):

(i) that is ceasing to operate in the state, shall pay any assessment owed to the department immediately upon ceasing to operate in the state; and

(ii) shall receive Medicaid inpatient hospital access payments under Section 26-36a-205 for the state fiscal year, adjusted using the same formula described in Subsection (7)(b).

(8) A hospital that is subject to payment of the assessment at the beginning of a state fiscal year, but during the state fiscal year experiences a change in status so that it no longer falls under the definition of a hospital subject to the assessment in Section 26-36a-204, shall:

(a) not be required to pay the hospital assessment beginning on the date established by the department by administrative rule; and

(b) not be entitled to Medicaid inpatient hospital access payments under Section 26-36a-205 on the date established by the department by administrative rule.

Section 203. Section 26-40-110 is amended to read:

26-40-110. Managed care -- Contracting for services.

(1) Program benefits provided to enrollees under the program, as described in Section 26-40-106, shall be delivered in a managed care system if the department determines that adequate services are available where the enrollee lives or resides.

(2) (a) The department shall use the following criteria to evaluate bids from health plans:

(i) ability to manage medical expenses, including mental health costs;

(ii) proven ability to handle accident and health insurance;

(iii) efficiency of claim paying procedures;

(iv) proven ability for managed care and quality assurance;

(v) provider contracting and discounts;

(vi) pharmacy benefit management;

(vii) an estimate of total charges for administering the pool;

(viii) ability to administer the pool in a cost-efficient manner;

(ix) the ability to provide adequate providers and services in the state; and

(x) other criteria established by the department.

(b) The dental benefits required by Section 26-40-106 may be bid out separately from other program benefits.

(c) Except for dental benefits, the department shall request bids for the program's benefits in 2008. The department shall request bids for the program's dental benefits in 2009. The department shall request bids for the program's benefits at least once every five years thereafter.

(d) The department's contract with health plans for the program's benefits shall include risk sharing provisions in which the health plan [~~must~~] shall accept at least 75% of the risk for any difference between the department's premium payments per client and actual medical expenditures.

(3) The executive director shall report to and seek recommendations from the Health Advisory Council created in Section 26-1-7.5:

(a) if the division receives less than two bids or proposals under this section that are acceptable to the division or responsive to the bid; and

(b) before awarding a contract to a managed care system.

(4) (a) The department shall award contracts to responsive bidders if the department determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

(b) The department may contract with the Group Insurance Division within the Utah State Retirement Office to provide services under Subsection (1) if:

(i) the executive director seeks the recommendation of the Health Advisory Council under Subsection (3); and

(ii) the executive director determines that the bids were not acceptable to the department.

(c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b) is not subject to the risk sharing required by Subsection (2)(d).

(5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.

Section 204. Section 26-41-104 is amended to read:

26-41-104. Training in use of epinephrine auto-injector.

(1) (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training, regarding the storage and emergency use of an epinephrine auto-injector, available to any teacher or other school employee who volunteers to become a qualified adult.

(b) The training described in Subsection (1)(a) may be provided by the school nurse, or other person qualified to provide such training, designated by the school district physician, the medical director of the local health department, or the local emergency medical services director.

(2) A person who provides training under Subsection (1) or (6) shall include in the training:

(a) techniques for recognizing symptoms of anaphylaxis;

(b) standards and procedures for the storage and emergency use of epinephrine auto-injectors;

(c) emergency follow-up procedures, including calling the emergency 911 number and contacting, if possible, the student's parent and physician; and

(d) written materials covering the information required under this Subsection (2).

(3) A qualified adult shall retain for reference the written materials prepared in accordance with Subsection (2)(d).

(4) A public school shall permit a student to possess an epinephrine auto-injector or possess and self-administer an epinephrine auto-injector if:

(a) the student's parent or guardian signs a statement:

(i) authorizing the student to possess or possess and self-administer an epinephrine auto-injector; and

(ii) acknowledging that the student is responsible for, and capable of, possessing or possessing and

self-administering an epinephrine auto-injector; and

(b) the student's health care provider provides a written statement that states that:

(i) it is medically appropriate for the student to possess or possess and self-administer an epinephrine auto-injector; and

(ii) the student should be in possession of the epinephrine auto-injector at all times.

(5) The Utah Department of Health, in cooperation with the state superintendent of public instruction, shall design forms to be used by public schools for the parental and health care providers statements described in Subsection (6).

(6) (a) The department:

(i) shall approve educational programs conducted by other persons, to train people under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine auto-injectors; and

(ii) may, as funding is available, conduct educational programs to train people regarding the use of and storage of emergency epinephrine auto-injectors.

(b) A person who volunteers to receive training to administer an epinephrine auto-injector under the provisions of this Subsection (6) [~~must~~] shall demonstrate a need for the training to the department, which may be based upon occupational, volunteer, or family circumstances, and shall include:

(i) camp counselors;

(ii) scout leaders;

(iii) forest rangers;

(iv) tour guides; and

(v) other persons who have or reasonably expect to have responsibility for at least one other person as a result of the person's occupational or volunteer status.

(7) The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish and approve training programs in accordance with this section; and

(b) establish a procedure for determining the need for training under Subsection (6)(b)(v).

Section 205. Section 26-47-103 is amended to read:

26-47-103. Department to award grants for assistance to persons with bleeding disorders.

(1) For purposes of this section:

(a) "Hemophilia services" means a program for medical care, including the costs of blood transfusions, and the use of blood derivatives and blood clotting factors.

(b) "Person with a bleeding disorder" means a person:

(i) who is medically diagnosed with hemophilia or a bleeding disorder;

(ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

(iii) who has either:

(A) insurance coverage that excludes coverage for hemophilia services;

(B) exceeded the person's insurance plan's annual maximum benefits;

(C) exceeded the person's annual or lifetime maximum benefits payable under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or

(D) insurance coverage available under either private health insurance, Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are greater than a percentage of the person's annual adjusted gross income as established by the department by administrative rule.

(2) (a) Within appropriations specified by the Legislature for this purpose, the department shall make grants to public and nonprofit entities who assist persons with bleeding disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for coverage of hemophilia services.

(b) Applicants for grants under this section:

(i) [~~must~~] shall be submitted to the department in writing; and

(ii) [~~must~~] shall comply with Subsection (3).

(3) Applications for grants under this section shall include:

(a) a statement of specific, measurable objectives, and the methods to be used to assess the achievement of those objectives;

(b) a description of the personnel responsible for carrying out the activities of the grant along with a statement justifying the use of any grant funds for the personnel;

(c) letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the services to be provided under the grant;

(d) a list of services to be provided by the applicant;

(e) the schedule of fees to be charged by the applicant; and

(f) other provisions as determined by the department.

(4) The department may accept grants, gifts, and donations of money or property for use by the grant program.

(5) (a) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, process, and criteria it will use in awarding grants under this section.

(b) The department shall submit an annual report on the implementation of the grant program:

(i) by no later than November 1; and

(ii) to the Health and Human Services Interim Committee and the Health and Human Services Appropriations Subcommittee.

Section 206. Section 26-49-202 is amended to read:

26-49-202. Volunteer health practitioner registration systems.

(1) To qualify as a volunteer health practitioner registration system, the registration system [~~must~~] shall:

(a) accept applications for the registration of volunteer health practitioners before or during an emergency;

(b) include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

(c) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and

(d) meet one of the following conditions:

(i) be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the United States Department of Health and Human Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as amended;

(ii) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42 U.S.C. Sec. 300hh as amended;

(iii) be operated by a:

(A) disaster relief organization;

(B) licensing board;

(C) national or regional association of licensing boards or health practitioners;

(D) health facility that provides comprehensive inpatient and outpatient healthcare services, including tertiary care; or

(E) governmental entity; or

(iv) be designated by the Department of Health as a registration system for purposes of this chapter.

(2) (a) Subject to Subsection (2)(b), while an emergency declaration is in effect, the Department of Health, a person authorized to act on behalf of the Department of Health, or a host entity shall confirm whether a volunteer health practitioner in Utah is registered with a registration system that complies with Subsection (1).

(b) The confirmation authorized under this Subsection (2) is limited to obtaining the identity of the practitioner from the system and determining whether the system indicates that the practitioner is licensed and in good standing.

(3) Upon request of a person authorized under Subsection (2), or a similarly authorized person in another state, a registration system located in Utah shall notify the person of the identity of a volunteer health practitioner and whether or not the volunteer health practitioner is licensed and in good standing.

(4) A host entity is not required to use the services of a volunteer health practitioner even if the volunteer health practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

Section 207. Section 26-49-701 is amended to read:

26-49-701. Uniformity of application and construction.

In applying and construing this chapter, consideration [~~must~~] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 208. Section 26A-1-112 is amended to read:

26A-1-112. Appointment of personnel.

(1) All local health department personnel shall be hired by the local health officer or [~~his~~] the local health officer's designee in accordance with the merit system, personnel policies, and compensation plans approved by the board and ratified pursuant to Subsection (2). The personnel shall have qualifications for their positions equivalent to those approved for comparable positions in the Departments of Health and Environmental Quality.

(2) The merit system, personnel policies, and compensation plans approved under Subsection (1) [~~must~~] shall be ratified by all the counties participating in the local health department.

(3) Subject to the local merit system, employees of the local health department may be removed by the local health officer for cause. A hearing shall be granted if requested by the employee.

Section 209. Section 26A-1-126 is amended to read:

26A-1-126. Medical reserve corps.

(1) In addition to the duties listed in Section 26A-1-114, a local health department may establish a medical reserve corps in accordance with this section.

(2) The purpose of a medical reserve corps is to enable a local health authority to respond with appropriate health care professionals to a national, state, or local emergency, a public health

emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health related activities.

(3) When an emergency has been declared in accordance with Subsection (2), a local health department may activate a medical reserve corps for the duration of the emergency.

(4) For purposes of this section, a medical reserve corps may include persons who:

(a) are licensed under Title 58, Occupations and Professions, and who are operating within the scope of their practice;

(b) are exempt from licensure, or operating under modified scope of practice provisions in accordance with Subsections 58-1-307(4) and (5); and

(c) within the 10 years preceding the declared emergency, held a valid license, in good standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license is not currently active.

(5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the local health department may authorize a person described in Subsection (4) to operate in a modified scope of practice as necessary to respond to the declared emergency.

(b) A person operating as a member of an activated medical reserve corps under this section:

(i) [~~must~~] shall be volunteering for and supervised by the local health department;

(ii) [~~must~~] shall comply with the provisions of this section;

(iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and

(iv) [~~must~~] shall carry a certificate issued by the local health department which designates the individual as a member of the medical reserve corps during the duration of the emergency.

(6) The local department of health may access the Division of Occupational and Professional Licensing database for the purpose of determining if a person's current or expired license to practice in the state was in good standing.

(7) The local department of health shall maintain a registry of persons who are members of a medical reserve corps. The registry of the medical reserve corps shall be made available to the public and to the Division of Occupational and Professional Licensing.

Section 210. Section 29-1-2 is amended to read:

29-1-2. Property worth more than $250 -- Limitation of liability -- Special arrangements -- Theft by, or negligence of, innkeeper or servant.

An innkeeper, hotel keeper, boarding house or lodging house keeper [~~shall not be obliged~~] is not required to receive from a guest for deposit in such safe or vault, property described in the next preceding section exceeding a total value of $250, and [~~shall not be~~] is not liable for such property exceeding such value whether received or not. Such innkeeper, hotel keeper, boarding house or lodging house keeper, by special arrangement with a guest, may receive for deposit in such safe or vault property upon such written terms as may be agreed upon. [~~An~~] A person who is an innkeeper, hotel keeper, boarding house or lodging house keeper shall be liable for a loss of any of such property of a guest in [~~his~~] the person's inn caused by the theft or negligence of the innkeeper or [~~his~~] the innkeeper's servant.

Section 211. Section 29-1-3 is amended to read:

29-1-3. Other personal property -- Limitation of liability.

(1) The liability of a person who is an innkeeper, hotel keeper, boarding or lodging house keeper, for loss of or injury to personal property placed in [~~his care by his~~] the person's care by the person's guests other than that described in Section 29-1-1, shall be that of a depositary for hire. [~~Such liability shall not~~]

(2) The liability described in Subsection (1) may not exceed $150 for each trunk and its contents, $50 for each valise, suitcase or other piece of hand luggage and its contents, and $10 for each box, bundle or package, and its contents, so placed in [~~his~~] the person's care, unless [~~he~~] the person has consented in writing with [~~such~~] the guest to assume a greater liability.

Section 212. Section 30-1-4.5 is amended to read:

30-1-4.5. Validity of marriage not solemnized.

(1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between a man and a woman who:

(a) are of legal age and capable of giving consent;

(b) are legally capable of entering a solemnized marriage under the provisions of this chapter;

(c) have cohabited;

(d) mutually assume marital rights, duties, and obligations; and

(e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

(2) The determination or establishment of a marriage under this section [~~must~~] shall occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Section 213. Section 30-1-5 is amended to read:

30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.

(1) A marriage solemnized before a person professing to have authority to perform marriages [~~shall not~~] may not be invalidated for lack of authority, if consummated in the belief of the parties or either of them that [~~he~~] the person had authority and that they have been lawfully married.

(2) This section may not be construed to validate a marriage that is prohibited or void under Section 30-1-2.

Section 214. Section 30-1-10 is amended to read:

30-1-10. Application by persons unknown to clerk -- Affidavit -- Penalty.

(1) When the parties are personally unknown to the clerk a license [~~shall not issue~~] may not be issued until an affidavit is made before [~~him~~] the clerk, which shall be filed and preserved by [~~him~~] the clerk, by a party applying for [~~such~~] the license, showing that there is no lawful reason in the way of [~~such~~] the marriage. [~~The party making such affidavit or any subscribing witness, if he falsely swears therein, is guilty of perjury.~~]

(2) A party who makes an affidavit described in Subsection (1) or a subscribing witness to the affidavit who falsely swears in the affidavit is guilty of perjury.

Section 215. Section 30-1-32 is amended to read:

30-1-32. Master plan for counseling.

(1) It shall be the function and duty of the premarital counseling board, after holding public hearings, to make, adopt, and certify to the county legislative body a master plan for premarital counseling of marriage license applicants within the purposes and objectives of this act.

(2) The master plan [~~shall include, but not be limited to,~~] described in Subsection (1) shall include:

(a) counseling procedures [~~which~~] that:

(i) will make applicants aware of problem areas in their proposed marriage [~~and~~];

(ii) suggest ways of meeting problems [~~and which~~]; and

(iii) will induce reconsideration or postponement [~~where~~] when:

(A) the applicants are not sufficiently matured or are not financially capable of meeting the responsibilities of marriage; or

(B) are marrying for reasons not conducive to a sound lasting marriage[~~. The plan shall include~~]; and

(b) standards for evaluating premarital counseling received by the applicants, prior to their application for a marriage license, which would justify issuance of certificate without further counseling being given or required.

(3) The board may, from time to time, amend or extend the plan described in Subsection (1).

(4) The premarital counseling board may, subject to Subsection (5):

(a) appoint a staff and employees as may be necessary for its work; and [~~may~~]

(b) contract with social service agencies or other consultants within the county or counties for services it requires[~~, providing, its expenditures shall not~~].

(5) Expenditures for the appointments and contracts described in Subsection (4) may not exceed the sums appropriated by the county legislative body plus sums placed at its disposal through gift or otherwise.

Section 216. Section 30-1-33 is amended to read:

30-1-33. Conformity to master plan for counseling as prerequisite to marriage license -- Exceptions.

Whenever the board of commissioners of a county has adopted a master plan for premarital counseling no resident of the county may obtain a marriage license without conforming to the plan, except that:

(1) Any person who applies for a marriage license shall have the right to secure the license and to marry notwithstanding their failure to conform to the required premarital counseling or their failure to obtain a certificate of authorization from the premarital counseling board if they wait six months from the date of application for issuance of the license.

(2) This [~~act shall not~~] chapter does not apply to any application for a marriage license where both parties are at least 19 years of age and neither has been previously divorced.

(3) This [~~act shall not~~] chapter does not apply to any application for a marriage license unless both applicants have physically resided in [~~the state of~~] Utah for 60 days immediately preceding their application.

(4) Premarital counseling required by this act shall be [~~deemed~~] considered fulfilled if the applicants present a certificate verified by a clergyman that the applicants have completed a course of premarital counseling approved by [~~his~~] a church and given by or under the supervision of the clergyman.

Section 217. Section 30-1-35 is amended to read:

30-1-35. Persons performing counseling services designated by board -- Exemption from license requirements.

For the purposes of this [~~act~~] chapter the premarital counseling board of each county or combination of counties may determine those persons who are to perform any services under this [~~act~~] chapter and any person so acting [~~shall not be~~] is not subject to prosecution or other sanctions for [~~his~~] the person's failure to hold any license for these services as may be required by the laws of the state [~~of Utah~~].

Section 218. Section 30-1-37 is amended to read:

30-1-37. Confidentiality of information obtained under counseling provisions.

Except for the information required or to be required on the marriage license application form, any information given by a marriage license applicant in compliance with this [~~act~~] chapter shall be confidential information and [~~shall not~~] may not be released by any person, board, commission, or other entity. However, the premarital counseling board or board of commissioners may use the information, without identification of individuals, to compile and release statistical data.

Section 219. Section 30-2-7 is amended to read:

30-2-7. Husband's liability for wife's torts.

For civil injuries committed by a married woman damages may be recovered from her alone, and her husband [~~shall not~~] may not be held liable [~~therefor~~] for those civil injuries, except in cases where he would be jointly liable with her if the marriage did not exist.

Section 220. Section 30-3-16.7 is amended to read:

30-3-16.7. Effect of petition -- Pendency of action.

(1) The filing of a petition for conciliation under this act shall, for a period of 60 days thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of marriage or separate maintenance unless the court otherwise orders.

(2) The pendency of an action for divorce, annulment of marriage or separate maintenance [~~shall not~~] does not prevent either party to the action from filing a petition for conciliation under this act, either on [~~his~~] the party's own or at the request and direction of the court as authorized by Section 30-3-17[~~; and the~~].

(3) The filing of a petition for conciliation shall stay for a period of 60 days, unless the court otherwise orders, any trial or default hearing upon the complaint. [~~However,~~]

(4) Notwithstanding any other provision of this section, when the judge of the family court division is advised in writing by a marriage counselor to whom a petition for conciliation has been referred that a reconciliation of the parties cannot be effected, the bar to filing an action or the stay of trial or default hearing shall be removed.

Section 221. Section 30-3-17 is amended to read:

30-3-17. Power and jurisdiction of judge.

(1) The judge of a district court may:

(a) counsel either spouse or both [~~and may in his~~];

(b) in the judge's discretion require one or both [~~of them~~] spouses to appear before [~~him and,~~] the judge;

(c) in those counties where a domestic relations counselor has been appointed pursuant to this [~~act~~] chapter, require [~~them~~] the spouses to file a petition for conciliation and to appear before [~~such~~] the counselor[~~,~~]; or [~~may~~]

(d) recommend the aid of:

(i) a physician, psychiatrist, psychologist, social service worker, or other specialists or scientific expert[~~,~~]; or

(ii) the pastor, bishop, or presiding officer of any religious denomination to which the parties may belong.

(2) The power and jurisdiction granted by this [~~act shall be~~] chapter is in addition to, and not in limitation of, that presently exercised by the district courts [~~and shall not be in limitation thereof~~].

Section 222. Section 30-3-17.1 is amended to read:

30-3-17.1. Proceedings considered confidential -- Written evaluation by counselor.

(1) The petition for conciliation and all communications, verbal or written, from the parties to the domestic relations counselors or other personnel of the conciliation department in counseling or conciliation proceedings shall be [~~deemed~~] considered to be made in official confidence within the meaning of Section 78B-1-137 and [~~shall not be~~] is not admissible or usable for any purpose in any divorce hearing or other proceeding. [~~However,~~]

(2) Notwithstanding Subsection (1), the marriage counselor may submit to the appropriate court a written evaluation of the prospects or prognosis of a particular marriage without divulging facts or revealing confidential disclosures.

Section 223. Section 30-3-18 is amended to read:

30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of counseling and education services not to be construed as condonation or promotion.

(1) Unless the court, for good cause shown and set forth in the findings, otherwise orders, no hearing for decree of divorce shall be held by the court until 90 days shall have elapsed from the filing of the complaint, [~~provided~~] but the court may make [~~such~~] interim orders as may be just and equitable.

(2) The 90-day period as provided in Subsection (1) [~~shall not~~] does not apply in any case where both

parties have completed the mandatory educational course for divorcing parents as provided in Section 30-3-11.3.

(3) The use of counseling, mediation, and education services provided under this chapter may not be construed as condoning the acts that may constitute grounds for divorce on the part of either spouse nor of promoting divorce.

Section 224. Section 30-3-33 is amended to read:

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.

(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.

(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.

(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.

(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.

(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.

(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but [~~shall not~~] may not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.

(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.

(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.

(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.

(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

(13) Each parent shall provide the other with [~~his~~] the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

(14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and

(c) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.

(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

(18) If the child is on a different parent-time schedule than a sibling, based on Sections 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with all the

minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

Section 225. Section 30-8-3 is amended to read:

30-8-3. Writing -- Signature required.

A premarital agreement [~~must~~] shall be in writing and signed by both parties. It is enforceable without consideration.

Section 226. Section 31A-2-301 is amended to read:

31A-2-301. Special hearing officers -- Witness and mileage fees.

(1) If the commissioner considers it necessary because of the technicality or complexity of the subject, [~~he~~] the commissioner may appoint a special hearing officer from outside the department staff and may contract for a reasonable professional fee for the services.

(2) (a) In hearings before the commissioner, witness fees and reimbursement for mileage traveled, if claimed, shall be allowed at the same rate as in district courts.

(b) Witness fees and reimbursement for mileage, together with the actual expense necessarily incurred in securing attendance of witnesses and their testimony, and the hearing officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.

(c) The commissioner shall be reimbursed for these costs as provided in Section 31A-2-205 if:

(i) the hearing is incident to an examination for which costs are payable under Section 31A-2-205; or

(ii) the commissioner orders the persons involved in the hearing to reimburse the department for hearing costs, which the commissioner may do if [~~he~~] the commissioner had reasonable cause to believe that the order which issued or might have issued was necessary.

(3) Whenever the commissioner is reimbursed for costs under this section, the expenditures [~~shall not~~] may not be charged against the department budget.

Section 227. Section 31A-2-302 is amended to read:

31A-2-302. Commissioner's disapproval.

(1) When the law requires the commissioner's approval for a certain action without a deemer clause, that approval [~~must~~] shall be express. The commissioner's disapproval of an action is assumed if the commissioner does not act within 60 days after receiving the application for approval or give notice of the commissioner's reasonable extension of that time period with the commissioner's reasons for the extension. Assumed disapproval under this subsection entitles the aggrieved person to request agency action under Section 63G-4-201.

(2) When the law provides that a certain action is not effective if disapproved by the commissioner within a certain period, the affirmative approval by the commissioner may make the action effective at a designated earlier date, but not earlier than the date of the commissioner's affirmative approval.

(3) Subsections (1) and (2) do not apply to the extent that the law specifically provides otherwise.

Section 228. Section 31A-5-208 is amended to read:

31A-5-208. Deposit of proceeds of subscriptions.

(1) All funds, and the securities and documents representing interests in property, received by a stock corporation for stock subscriptions or by a mutual for applications for insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in the name of the corporation with a custodian financial institution qualified under Subsection 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner under which withdrawals may be made only in accordance with conditions specified in the agreement, and with the commissioner's approval. Securities may be held as authorized in Subsection 31A-2-206(2) and [~~must~~] are required to be approved by the commissioner.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Section 229. Section 31A-5-305 is amended to read:

31A-5-305. Authorized securities.

(1) (a) The articles of incorporation of a stock corporation may authorize the kind of shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except that:

(i) nonvoting common stock may not be issued;

(ii) all classes of common stock [~~must~~] shall have equal voting rights;

(iii) all common stock [~~must~~] shall have a stated par value; and

(iv) except with the commissioner's approval, for two years after the initial issuance of a certificate of authority, the corporation may issue no shares and no other securities convertible into shares except a single class of common stock.

(b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or scrip.

(c) The consideration and payment for shares and certificates representing shares is governed by Subsection 31A-5-207(1)(a).

(d) The liability of subscribers and shareholders for unpaid subscriptions and the status of stock is governed by Section 16-10a-622.

(e) A shareholder's preemptive rights is governed by Section 16-10a-630.

(f) Stock corporations may issue bonds and contribution notes on the same basis as mutuals under Subsections (2)(a) and (b).

(2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of one or more classes. The articles of incorporation shall specify the amount of each class of bonds the corporation is authorized to issue, their designations, preferences, limitations, rates of interest, relative rights, and other terms, subject to all of the following provisions:

(i) During the first year after the initial issuance of a certificate of authority, the corporation may issue only a single class of bonds with identical rights.

(ii) After the first year, but within five years after the initial issuance of a certificate of authority, additional classes of bonds may be authorized after receiving the approval of the commissioner. The commissioner shall approve the issuance if the commissioner finds that policyholders and prior bondholders will not be prejudiced.

(iii) The rate of interest shall be fair.

(iv) The bonds shall bear a maturity date not later than 10 years from the date of issuance, when principal and accrued interest shall be due and payable, subject to Subsection (2)(d).

(b) A mutual may issue contribution notes with the commissioner's approval. The contribution notes may be denominated by any name that is not misleading. The contribution notes are subject to this subsection. The commissioner may approve the issuance only if the commissioner finds that:

(i) the notes will not be issued in denominations of less than $2,500, and no single issue will be sold to more than 15 persons;

(ii) no discount, commission, or other fee will be paid or allowed;

(iii) the notes will not be the subject of a public offering;

(iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds, or prior contribution notes; and

(v) the mutual's articles or bylaws do not forbid their issuance.

(c) A mutual may not:

(i) if it has any outstanding obligations on bonds or contribution notes, borrow on contribution notes from, or sell bonds to, any other insurer without the approval of the commissioner; or

(ii) make a loan to another insurer except a fully secured loan at usual market rates of interest.

(d) Payment of the principal or interest on bonds or contribution notes may be made in whole or in part only after approval by the commissioner. The commissioner's approval shall be given if all the financial requirements of the issuer to do the insurance business it is then doing will continue to be satisfied after that payment, and if the interests of its insureds and the public are not endangered by the payment. In the event of liquidation under Chapter 27a, Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are subordinate to the payment of principal and interest on any bonds issued by the corporation.

(e) This section does not prevent a mutual from borrowing money on notes which are its general obligations, nor from pledging any part of its disposable assets.

(3) This section does not apply to securities issued prior to July 1, 1986.

Section 230. Section 31A-6a-104 is amended to read:

31A-6a-104. Required disclosures.

(1) A service contract reimbursement insurance policy insuring a service contract that is issued, sold, or offered for sale in this state [~~must~~] shall conspicuously state that, upon failure of the service contract provider to perform under the contract, the issuer of the policy shall:

(a) pay on behalf of the service contract provider any sums the service contract provider is legally obligated to pay according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider; or

(b) provide the service which the service contract provider is legally obligated to perform, according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider.

(2) (a) A service contract may not be issued, sold, or offered for sale in this state unless the service contract contains the following statements in substantially the following form:

(i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company."; and

(ii) "This service contract or warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

(b) A service contract or reimbursement insurance policy may not be issued, sold, or offered for sale in this state unless the contract contains a statement in substantially the following form, "Coverage afforded under this contract is not guaranteed by the Property and Casualty Guaranty Association."

(3) A service contract shall:

(a) conspicuously state the name, address, and a toll free claims service telephone number of the reimbursement insurer;

(b) identify the service contract provider, the seller, and the service contract holder;

(c) conspicuously state the total purchase price and the terms under which the service contract is to be paid;

(d) conspicuously state the existence of any deductible amount;

(e) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;

(f) state a term, restriction, or condition governing the transferability of the service contract; and

(g) state a term, restriction, or condition that governs cancellation of the service contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.

(4) If prior approval of repair work is required, a service contract [~~must~~] shall conspicuously state the procedure for obtaining prior approval and for making a claim, including:

(a) a toll free telephone number for claim service; and

(b) a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.

(5) A preexisting condition clause in a service contract [~~must~~] shall specifically state which preexisting condition is excluded from coverage.

(6) (a) Except as provided in Subsection (6)(c), a service contract [~~must~~] shall state the conditions upon which the use of a nonmanufacturers' part is allowed.

(b) A condition described in Subsection (6)(a) [~~must~~] shall comply with applicable state and federal laws.

(c) This Subsection (6) does not apply to a home warranty contract.

Section 231. Section 31A-8a-201 is amended to read:

31A-8a-201. License required.

(1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health discount program, a person [~~must~~] shall:

(a) be authorized to transact business in this state; and

(b) be licensed by the commissioner.

(2) (a) An application for licensure under this chapter [~~must~~] shall be filed with the commissioner on a form prescribed by the commissioner.

(b) The application shall be sworn to by an officer or authorized representative of the health discount program and shall include:

(i) articles of incorporation with bylaws or other enabling documents that establish the organizational structure;

(ii) information required by the commissioner by administrative rule which the commissioner determines is necessary to:

(A) identify and locate principals, operators, and marketers involved with the health discount program; and

(B) protect the interests of enrollees of health discount programs, health care providers, and consumers;

(iii) biographical information, and when requested by the commissioner, a criminal background check, under the provisions of Subsection 31A-23a-105(3);

(iv) the disclosures required in Section 31A-8a-203; and

(v) the fee established in accordance with Section 31A-3-103.

Section 232. Section 31A-8a-203 is amended to read:

31A-8a-203. Information filed with the department.

(1) Prior to operating a health discount program, a person [~~must~~] shall submit the following to the commissioner:

(a) a copy of contract forms used by the health discount program for:

(i) health care providers or health care provider networks participating in the health discount program, including the discounts for medical services provided to enrollees;

(ii) marketing;

(iii) administration of the health discount program;

(iv) enrollment;

(v) investment management for the health discount programs; and

(vi) subcontracts for any services;

(b) the program's proposed marketing plan; and

(c) dispute resolution procedures for program holders.

(2) The company [~~must~~] shall file prior to use:

(a) the form of contracts used by the health discount program operator;

(b) the marketing plan; and

(c) dispute resolution procedures.

(3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Section 233. Section 31A-8a-204 is amended to read:

31A-8a-204. Advertising restrictions and requirements.

(1) An operator of a health discount program may not:

(a) use any form of words or terms that may confuse health discount programs with other types

of health insurance in advertising or marketing such as "health plan," "health benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue," "premium," and "preferred provider";

(b) use other terms as designated by the commissioner by administrative rule in advertisement or marketing that could reasonably mislead a consumer to believe that a discount health program is any other form of health insurance; or

(c) refer to sales representatives as "agents," "producers," or "consultants."

(2) A health discount program operator:

(a) [~~must~~] shall have a written agreement with any marketer of the health discount program prior to marketing, selling, promoting, or distributing the health discount programs;

(b) [~~must~~] shall file with the commissioner all advertisement, marketing materials, brochures, and discount programs prior to their use or distribution; and

(c) [~~must~~] shall make the following disclosures:

(i) in writing in at least 10-point type and bolded; and

(ii) with any marketing or advertising to the public and with any enrollment forms given to an enrollee:

(A) the program is not a health insurance policy;

(B) the program provides discounts only at certain health care providers for health care services;

(C) the program holder is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the health discount program; and

(D) the corporate name and the location of the health discount program operator.

(3) A health discount program operator or marketer who sells the health discount program with another product [~~must~~] shall provide the consumer a written itemization of the fees of the health discount program separate from any fees or charges for the other product, which can be purchased separately.

Section 234. Section 31A-8a-205 is amended to read:

31A-8a-205. Disclosure of health discount program terms.

(1) (a) Health discount program operators [~~must~~] shall provide to each purchaser or potential purchaser a copy of the terms of the discount program at the time of purchase.

(b) For purposes of this section "purchaser" means the employer in an employer sponsored plan, or an individual purchasing outside of an employer relationship.

(2) The disclosure required by Subsection (1) should be clear and thorough and should include any administrative or monthly fees, trial periods, procedures for securing discounts, cancellation procedures and corresponding refund requests, and procedures for filing disputes.

(3) (a) A contract [~~must~~] shall be signed by the purchaser acknowledging the terms before any fees are collected and [~~must~~] shall include notice of the purchaser's 10-day recision rights.

(b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is entered into via telephone, facsimile transmission or the Internet, the following is considered a signing of the contract:

(i) if via the Internet, the online application form is completed and sent by the purchaser to the health discount program operator;

(ii) if via facsimile transmission, the application is completed, signed and faxed to the health discount program operator; or

(iii) if via telephone, the script used by the health discount program operator to solicit the purchaser [~~must~~] shall include any limitations or exclusions to the program, and the contract [~~must~~] shall be provided to the purchaser via facsimile, mail, or email within 10 working days of the purchaser consenting to enrolling over the telephone.

Section 235. Section 31A-8a-206 is amended to read:

31A-8a-206. Provider agreements -- Record keeping.

(1) A health discount program operator may not place any restrictions on an enrollee's access to health care providers such as waiting periods or notification periods.

(2) A health discount program operator may not reimburse health care providers for services rendered to an enrollee, unless the health discount program operator is a licensed third party administrator.

(3) (a) A health discount program operator [~~must~~] shall have a written agreement with a health care provider who agrees to provide discounts to health discount program enrollees.

(b) If the written agreement is with a provider network, the health discount plan [~~must~~] shall require the provider network to have written agreements with each of its health care providers.

(4) The health discount program operator shall maintain a copy of each active health care provider agreement.

Section 236. Section 31A-8a-207 is amended to read:

31A-8a-207. Notice of change.

(1) A health discount program operator [~~must~~] shall provide the commissioner notice of:

(a) any change in the health discount program's organizational name, change of business or mailing address, or change in ownership or principals; and

(b) any change in the information submitted in accordance with Section 31A-8a-203.

(2) (a) The notice required by Subsection (1) [~~should~~] shall be submitted 30 days prior to any change.

(b) [~~The~~] Approval by the commissioner [~~must approve~~] is required for any changes in forms that required approval under Section 31A-8a-203.

(3) A health insurer or health maintenance organization licensed under this title shall annually file with the Accident and Health Data Survey, a list of all value-added benefits offered at no cost to its enrollees.

Section 237. Section 31A-9-503 is amended to read:

31A-9-503. Conversion of a fraternal to a mutual.

A domestic fraternal may be converted into a mutual, as follows:

(1) In addition to complying with the requirements of Chapter 16, Insurance Holding Companies, the board or the supreme governing body shall adopt a plan of conversion stating:

(a) the reasons for and purposes of the proposed action;

(b) the proposed terms, conditions, and procedures and the estimated expenses of implementing the conversion;

(c) the proposed name of the corporation; and

(d) the proposed articles and bylaws.

(2) If the board and the supreme governing body disagree on the conversion plan, the decision of the supreme governing body prevails.

(3) The plan shall be filed with the commissioner for approval, together with any information under Subsection 31A-5-204(2) the commissioner reasonably requires. The commissioner shall approve the plan unless [~~he~~] the commissioner finds, after a hearing, that it would be contrary to the law, that the new mutual would not satisfy the requirements for a certificate of authority under Section 31A-5-212, that the plan would be contrary to the interests of members or the public, or that the applicable requirements of Chapter 16, Insurance Holding Companies, have not been satisfied.

(4) After being approved by the commissioner, the plan shall be submitted for approval to the persons who were voting members on the date of the commissioner's approval under Subsection (3). For approval of the plan, at least a majority of the votes cast [~~must~~] shall be in favor of the plan, or a larger number if required by the laws of the fraternal.

(5) The officers and directors of the fraternal shall be the initial officers and directors of the mutual.

(6) A copy of the resolution adopted under Subsection (4) shall be filed with the commissioner, stating the number of members entitled to vote, the number voting, the method of voting, and the number of votes cast in favor of the plan, stating separately the votes cast by mail and the votes cast in person.

(7) If the requirements of the law are met, the commissioner shall issue a certificate of authority to the new mutual. The fraternal then ceases its legal existence and the corporate existence of the new mutual begins. However, the new mutual is considered to have been incorporated as of the date the converted fraternal was incorporated. The new mutual has all the assets and is liable for all of the obligations of the converted fraternal. The commissioner may grant a period not exceeding one year for adjustment to the requirements of Chapter 5, Domestic Stock and Mutual Insurance Corporations, specifying the extent to which particular provisions of Chapter 5 do not apply.

(8) The corporation may not pay compensation other than regular salaries to existing personnel in connection with the proposed conversion. With the commissioner's approval, payment may be made at reasonable rates for printing costs and for legal and other professional fees for services actually rendered in connection with the conversion. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any insurance office staff members involved, shall be paid by the corporation being converted.

Section 238. Section 31A-11-107 is amended to read:

31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.

(1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if [~~he~~] the commissioner finds that:

(a) the corporation is able to negotiate, execute, and carry out the motor club business in a sound, reliable, and ongoing manner;

(b) the reinsurance requirements of Subsection (2) are satisfied; and

(c) all other applicable requirements of law are satisfied.

(2) If a motor club provides legal expense service other than that authorized in Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section 31A-11-112, it [~~must~~] shall fully reinsure the excess service with an insurer authorized under Chapter 5, Domestic Stock and Mutual Insurance Corporations, or 14, Foreign Insurers. That insurer [~~must~~] shall assume direct liability to the insured, and [~~must~~] shall fully comply with Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

Section 239. Section 31A-15-203 is amended to read:

31A-15-203. Risk retention groups chartered in this state.

(1) (a) A risk retention group under this part shall be chartered and licensed to write only liability insurance pursuant to this part and, except as provided elsewhere in this part, [~~must~~] shall comply with all of the laws, rules, and requirements that apply to liability insurers chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements are not a limitation on other laws, rules, or requirements of this state.

(b) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file an annual statement with the department and the NAIC in a form prescribed by the commissioner, and completed in diskette form if required by the commissioner, completed in accordance with the statement instructions and the NAIC Accounting Practices and Procedures Manual.

(2) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision of the plan or study in the event of any subsequent material change in any item of the plan or study within 10 days of any such change. The group may not offer any additional kinds of liability insurance, in this state or in any other state, until any revision of the plan or study is approved by the commissioner.

(3) (a) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(i) the identity of the initial members of the group;

(ii) the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

(iii) the amount and nature of initial capitalization;

(iv) the coverages to be afforded; and

(v) the states in which the group intends to operate.

(b) Upon receipt of this information the commissioner shall forward the information to the NAIC. Providing notification to the NAIC is in addition to, and may not be sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

Section 240. Section 31A-15-207 is amended to read:

31A-15-207. Purchasing groups -- Exemption from certain laws.

A purchasing group and its insurers are subject to all applicable laws of this state, except that a purchasing group and its insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing group or its members insurance on a basis providing advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on a group basis described in Subsection (2);

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group [~~must~~] have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) require that a certain percentage of a purchasing group [~~must~~] obtain insurance on a group basis;

(7) otherwise discriminate against a purchasing group or any of its members; or

(8) require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance producer residing in this state.

Section 241. Section 31A-15-210 is amended to read:

31A-15-210. Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups are imposed and [~~must~~] shall be paid as follows:

(1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to premium taxes and other taxes imposed on other admitted liability insurers relative to coverage of risks resident or located in this state.

(2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed on the licensed producer who effected coverage on risks resident or located in this state at the same rate and in the same manner and subject to the same procedures, interest, and penalties that apply to taxes imposed on other licensed producers effecting coverage with approved, nonadmitted surplus lines insurers on risks resident or located in this state.

Section 242. Section 31A-17-503 is amended to read:

31A-17-503. Actuarial opinion of reserves.

(1) This section becomes operative on December 31, 1993.

(2) General: Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered to be necessary to its scope.

(3) Actuarial analysis of reserves and assets supporting reserves:

(a) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by Subsection (2), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including [~~but not limited to~~] the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including [~~but not limited to~~] the benefits under the expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may consider necessary in order to render the opinion required by this section.

(4) Requirement for opinion under Subsection (3): Each opinion required by Subsection (3) shall be governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(5) Requirement for all opinions: Every opinion shall be governed by the following provisions:

(a) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1993.

(b) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by rule prescribe.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth by department rule.

(f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(h) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, are considered protected records under Section 63G-2-305 and may not be made public and are not subject to subpoena under Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or rules promulgated under this section. However, the memorandum or other material may otherwise be released by the commissioner (i) with the written consent of the company or (ii) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited in its marketing or is cited before any governmental agency other than the department or is released to the news media, all portions of the memorandum are no longer confidential.

Section 243. Section 31A-17-506 is amended to read:

31A-17-506. Computation of minimum standard by calendar year of issue.

(1) Applicability of Section 31A-17-506: The interest rates used in determining the minimum standard for the valuation shall be the calendar year statutory valuation interest rates as defined in this section for:

(a) all life insurance policies issued in a particular calendar year, on or after the operative date of Subsection 31A-22-408(6)(d);

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) Calendar year statutory valuation interest rates:

(a) The calendar year statutory valuation interest rates, "I," shall be determined as follows and the results rounded to the nearer 1/4 of 1%:

(i) for life insurance:

I = .03 + W(R1 - .03) + (W/2)(R2 - .09);

(ii) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

I = .03 + W(R - .03),

where R1 is the lesser of R and .09,

R2 is the greater of R and .09,

R is the reference interest rate defined in Subsection (4), and

W is the weighting factor defined in this section;

(iii) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Subsection (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years, and the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply; and

(v) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply.

(b) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than [~~1/2~~] one-half of 1% the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d) becomes operative.

(3) Weighting factors:

(a) The weighting factors referred to in the formulas stated in Subsection (2) are given in the following tables:

(i) (A) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50
More than 10, but less than 20:	.45
More than 20:	.35

(B) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A), (B), and (C), according to the rules and definitions in Subsection (3)(b):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factors for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Plan Type			
	A	B	C

(B) For annuities and guaranteed interestcontracts valued on a change in fund basis, the factors shown in Subsection (3)(a)(iii)(A)increased by:

	.15	.25	.05
Plan Type			
	A	B	C

(C) For annuities and guaranteed interestcontracts valued on an issue year basis, other thanthose with no cash settlement options, which donot guarantee interest on considerations receivedmore than one year after issue or purchase and forannuities and guaranteed interest contracts valuedon a change in fund basis which do not guaranteeinterest rates on considerations received morethan 12 months beyond the valuation date, thefactors shown in Subsection (3)(a)(iii)(A) orderived in Subsection (3)(a)(iii)(B) increased by:

.05 .05 .05.

(b) (i) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(ii) Plan type as used in the above tables is defined as follows:

(A) Plan Type A: At any time policyholder may withdraw funds only:

(I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(II) without such adjustment but installments over five years or more;

(III) as an immediate life annuity; or

(IV) no withdrawal permitted.

(B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder withdraw funds only:

(Aa) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(Bb) without such adjustment but in installments over five years or more; or

(Cc) no withdrawal permitted.

(II) At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

(C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

(I) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(II) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(iii) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options [~~must~~] shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is defined as follows:

(a) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned

Corporate Bonds, as published by Moody's Investors Service, Inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Subsection (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(5) Alternative method for determining reference interest rates: In the event that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published by Moody's Investors Service, Inc. or in the event that the National Association of Insurance Commissioners determines that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule promulgated by the commissioner, may be substituted.

Section 244. Section 31A-17-507 is amended to read:

31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.

(1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium [~~shall not~~] may not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

(2) Provided that for any life insurance policy issued on or after January 1, 1997, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy anniversary calculated as described in Subsection (1) and the reserve as of such policy anniversary calculated as described in that subsection, but with:

(a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such excess first year premium;

(b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(c) the policy being assumed to mature on such date as an endowment; and

(d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 31A-17-504 and 31A-17-506 shall be used.

(3) Reserves according to the commissioner's reserve valuation method for:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code;

(c) accident and health and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and

benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of Subsections (1) and (2).

Section 245. Section 31A-17-510 is amended to read:

31A-17-510. Optional reserve calculation.

(1) Reserves for all policies and contracts issued prior to January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date. Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, [~~shall not~~] may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided; provided, however, that, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by Section 31A-17-502 [~~shall not~~] may not be considered to be the adoption of a higher standard of valuation.

Section 246. Section 31A-17-512 is amended to read:

31A-17-512. Reserve calculation -- Indeterminate premium plans.

(1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any such plan [~~must~~] shall:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method which is consistent with the principles of this part, as determined by rules promulgated by the commissioner.

Section 247. Section 31A-18-106 is amended to read:

31A-18-106. Investment limitations generally applicable.

(1) The investment limitations listed in Subsections (1)(a) through (m) apply to an insurer.

(a) For an investment authorized under Subsection 31A-18-105(1) that is not amortizable under applicable valuation rules, the limitation is 5% of assets.

(b) For an investment authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.

(c) For an investment authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.

(d) For an investment authorized under Subsection 31A-18-105(4) that is considered to be an investment in a kind of security or evidence of debt pledged, the investment is subject to the class limitations applicable to the pledged security or evidence of debt.

(e) For an investment authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.

(f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:

(i) 20% of assets for a life insurer; and

(ii) 50% of assets for a nonlife insurer.

(g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:

(i) 5% of assets; or

(ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 25% of assets.

(h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:

(i) 20% of assets, inclusive of home office and branch office properties; or

(ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.

(i) For an investment authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.

(j) For an investment authorized under Subsection 31A-18-105(11), the limitation is the greater of that permitted or required for compliance with Section 31A-18-103.

(k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a subsidiary includes:

(i) a loan, advance, or contribution to a subsidiary by an insurer; and

(ii) an insurer holding a bond, note, or stock of a subsidiary.

(l) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

(m) For an investment authorized under Subsections 31A-18-105(13) and (14), the aggregate limitation is 10% of assets.

(2) The limits on investments listed in Subsections (2)(a) through (e) apply to each insurer.

(a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:

(A) an investment in the government of the United States or its agencies;

(B) an investment guaranteed by the government of the United States;

(C) an investment in the insurer's insurance subsidiaries; or

(D) a cash deposit that:

(I) is cash;

(II) is held by a depository institution, as defined in Section 7-1-103, that:

(Aa) is solvent;

(Bb) is federally insured; and

(Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total assets of at least 5%, if the depository institution is not a bank; and

(III) does not exceed the greater of:

(Aa) .4 times the Tier 1 capital of the depository institution; or

(Bb) the amount insured by a federal deposit insurance agency.

(ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall:

(A) define "Tier 1 leverage ratio";

(B) define "Tier 1 capital"; and

(C) proscribe the method to calculate Tier 1 capital.

(b) An investment authorized by Subsection 31A-18-105(3) shall comply with the requirements listed in this Subsection (2)(b).

(i) (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged, unless the excess over 80%:

(I) is insured or guaranteed by:

(Aa) the United States;

(Bb) a state of the United States;

(Cc) an instrumentality, agency, or political subdivision of the United States or a state; or

(Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or

(II) is insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.

(B) A mortgage loan representing a purchase money mortgage acquired from the sale of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).

(ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate may only be secured by:

(A) unencumbered real property that is located in the United States; or

(B) an unencumbered interest in real property that is located in the United States.

(iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold estate shall require that:

(A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term;

(B) the real estate not be otherwise encumbered; and

(C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

(iv) Subject to Subsection (2)(b)(v):

(A) participation in a mortgage loan [~~must~~] shall:

(I) be senior to other participants; and

(II) give the holder substantially the rights of a first mortgagee; or

(B) the interest of the insurer in the evidence of indebtedness [~~must~~] shall be of equal priority, to the extent of the interest, with other interests in the real property.

(v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is not considered to be encumbered within the meaning of this chapter by reason of a prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

(A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and

(B) the security created by the prior mortgage or trust deed is a first lien.

(c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the market

value of the collateral pledged, except that a loan upon the pledge of a United States government bond may be equal to the market value of the pledge.

(d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.

(e) An investment authorized under Subsection 31A-18-105(10) shall be in connection with a potential change in the value of specifically identified:

(i) asset that the insurer owns; or

(ii) liability that the insurer has incurred.

(3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each insurer.

(a) Except for a financial futures contract and real property acquired and occupied by the insurer for home and branch office purposes, a security or other investment is not eligible for purchase or acquisition under this chapter unless it is:

(i) interest bearing or income paying; and

(ii) not then in default.

(b) A security is not eligible for purchase at a price above its market value.

(4) Computation of percentage limitations under this section:

(a) is based only upon the insurer's total qualified invested assets described in Section 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

(b) excludes investments permitted under Section 31A-18-108 and Subsections 31A-17-203(2) and (3).

(5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer Receivership Act.

(6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more persons with authority to make the insurer's investment decisions are "incompetent" as used in Subsection 31A-5-410(3).

(7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Section 248. Section 31A-19a-206 is amended to read:

31A-19a-206. Disapproval of rates.

(1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly conflicts with:

(i) this title; or

(ii) any rule made under this title.

(b) The disapproval under Subsection (1)(a) shall:

(i) be in writing;

(ii) specify the statute or rule with which the filing conflicts; and

(iii) state when the rule is no longer effective.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (1)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (1)(a) is issued.

(ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) disapproving the rate filing.

(2) (a) If within 90 calendar days of the date on which a rate filing is filed the commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the insurer or rate organization that made the filing.

(b) The order described in Subsection (2)(a) shall specify how the rate filing fails to meet the requirements of Section 31A-19a-201 or 31A-19a-202.

(c) (i) If an insurer's or rate service organization's rate filing is disapproved under Subsection (2)(a), the insurer or rate service organization may request a hearing on the disapproval within 30 calendar days of the date on which the order described in Subsection (2)(a) is issued.

(ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall schedule the hearing within 30 calendar days of the date on which the commissioner receives the request for a hearing.

(iii) After the hearing, the commissioner shall issue an order:

(A) approving the rate filing; or

(B) (I) disapproving the rate filing; and

(II) stating when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) In a hearing held under this Subsection (2), the insurer or rate service organization bears the burden of proving compliance with the

requirements of Section 31A-19a-201 or 31A-19a-202.

(3) (a) If the order described in Subsection (2)(a) is issued after the implementation of the rate filing, the commissioner may order that use of the rate filing be discontinued for any policy issued or renewed on or after a date not less than 30 calendar days from the date the order was issued.

(b) If an insurer or rate service organization requests a hearing under Subsection (2), the order to discontinue use of the rate filing is stayed:

(i) beginning on the date the insurer or rate service organization requests a hearing; and

(ii) ending on the date the commissioner issues an order after the hearing that addresses the stay.

(4) If the order described in Subsection (2)(a) is issued before the implementation of the rate filing:

(a) an insurer or rate service organization may not implement the rate filing; and

(b) the rates of the insurer or rate service organization at the time of disapproval continue to be in effect.

(5) (a) If after a hearing the commissioner finds that a rate that has been previously filed and has been in effect for more than 90 calendar days no longer meets the requirements of Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any insurer or rate service organization be discontinued.

(b) The commissioner shall give any insurer that will be affected by an order that may be issued under Subsection (5)(a) notice of the hearing at least 10 business days prior to the hearing.

(c) The order issued under Subsection (5)(a) shall:

(i) be in writing;

(ii) state the grounds for the order; and

(iii) state when, within a reasonable time from the date on which the order is issued, the rate is no longer effective.

(d) The order issued under Subsection (5)(a) [~~shall not~~] may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(e) The order issued under Subsection (5)(a) may include a provision for a premium adjustment for contracts or policies made or issued after the effective date of the order.

(6) (a) When an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall, on the insurer's request, specify interim rates for the insurer.

(b) An interim rate described in Subsection (6)(a):

(i) shall be high enough to protect the interests of all parties; and

(ii) may, when necessary to protect the policyholders, order that a specified portion of the premiums be placed in an escrow account approved by the commissioner.

(c) When the new rates become effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that minimal refunds to policyholders need not be distributed.

Section 249. Section 31A-19a-208 is amended to read:

31A-19a-208. Special restrictions on individual insurers.

(1) The commissioner may require by order that a particular insurer file any or all of its rates and supplementary rate information 30 calendar days prior to their effective date, if the commissioner finds, after a hearing, that to protect the interests of the insurer's insureds and the public in Utah, the commissioner [~~must~~] shall exercise closer supervision of the insurer's rates, because of the insurer's financial condition or rating practices.

(2) The commissioner may extend the waiting period described in Subsection (1) for any filing for not to exceed 30 additional calendar days, by written notice to the insurer before the first 30-day period expires.

(3) A filing that has not been disapproved before the expiration of the waiting period is considered to meet the requirements of this chapter, subject to the possibility of subsequent disapproval under Section 31A-19a-206.

Section 250. Section 31A-19a-309 is amended to read:

31A-19a-309. Recording and reporting of experience.

(1) (a) The commissioner may adopt rules for the development of statistical plans, for use by all insurers in recording and reporting their loss and expense experience, in order that the experience of those insurers may be made available to the commissioner.

(b) The rules provided for in Subsection (1) may include:

(i) the data that [~~must~~] shall be reported by an insurer;

(ii) definitions of data elements;

(iii) the timing and frequency of data reporting by an insurer;

(iv) data quality standards;

(v) data edit and audit requirements;

(vi) data retention requirements;

(vii) reports to be generated; and

(viii) the timing of reports to be generated.

(c) Except for workers' compensation insurance under Section 31A-19a-404, an insurer may not be required to record or report its experience on a

classification basis that is inconsistent with its own rating system.

(2) (a) The commissioner may designate one or more rate service organizations to assist the commissioner in gathering that experience and making compilations of the experience.

(b) The compilations developed under Subsection (2)(a) shall be made available to the public.

(3) The commissioner may make rules and plans for the interchange of data necessary for the application of rating plans.

(4) To further uniform administration of rate regulatory laws, the commissioner and every insurer and rate service organization may:

(a) exchange information and experience data with insurance supervisory officials, insurers, and rate service organizations in other states; and

(b) consult with the persons described in Subsection (4)(a) with respect to the application of rating systems and the reporting of statistical data.

Section 251. Section 31A-21-101 is amended to read:

31A-21-101. Scope of Chapters 21 and 22.

(1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22, Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

(a) delivered or issued for delivery in this state;

(b) on property ordinarily located in this state;

(c) on persons residing in this state when the policy is issued; or

(d) on business operations in this state.

(2) This chapter and Chapter 22 do not apply to:

(a) an exemption provided in Section 31A-1-103;

(b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;

(c) an insurance policy on business operations in this state:

(i) if:

(A) the contract is negotiated primarily outside this state; and

(B) the operations in this state are incidental or subordinate to operations outside this state; and

(ii) except that insurance required by a Utah statute [~~must~~] shall conform to the statutory requirements; or

(d) other exemptions provided in this title.

(3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1) and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean marine and inland marine insurance.

(b) Section 31A-21-201 applies to inland marine insurance that is written according to manual rules or rating plans.

(4) A group or blanket policy is subject to this chapter and Chapter 22, except:

(a) a group or blanket policy outside the scope of this title under Subsection 31A-1-103(3)(h); and

(b) other exemptions provided under Subsection (5).

(5) The commissioner may by rule exempt any class of insurance contract or class of insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the Utah insureds, creditors, or the public would not be harmed by the exemption.

(6) Workers' compensation insurance, including that written by the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund, is subject to this chapter and Chapter 22.

(7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable to either a policy or a contract is applicable to both.

Section 252. Section 31A-21-312 is amended to read:

31A-21-312. Notice and proof of loss.

(1) Every insurance policy shall provide that:

(a) when notice of loss is required separately from proof of loss, notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the policy, is notice to the insurer; and

(b) failure to give any notice or file any proof of loss required by the policy within the time specified in the policy does not invalidate a claim made by the insured, if the insured shows that it was not reasonably possible to give the notice or file the proof of loss within the prescribed time and that notice was given or proof of loss filed as soon as reasonably possible.

(2) Failure to give notice or file proof of loss as required by Subsection (1)(b) does not bar recovery under the policy if the insurer fails to show it was prejudiced by the failure. This subsection may not be construed to extend the statute of limitations applicable under Section 31A-21-313.

(3) The insurer shall, on request, promptly furnish an insured any forms or instructions needed to make a proof of loss.

(4) As an alternative to giving notice directly under Subsection (1)(a), it is a sufficient service of notice or of proof of loss if a first class postage prepaid envelope addressed to the insurer and containing the proper notice or proof of loss is deposited in any United States post office within the time prescribed.

(5) The commissioner shall adopt rules dealing with notice of loss and proof of loss time limitations under insurance policies. Under Section 31A-21-202, the commissioner's express approval

[~~must~~] shall be received before any contract clause requiring notice of loss or proof of loss in a manner inconsistent with the rule may be used in an insurance contract.

(6) The acknowledgment by the insurer of the receipt of notice, the furnishing of forms for filing proofs of loss, the acceptance of those proofs, or the investigation of any claim are not alone sufficient to waive any of the rights of the insurer in defense of any claim arising under the insurance policy.

Section 253. Section 31A-21-313 is amended to read:

31A-21-313. Limitation of actions.

(1) An action on a written policy or contract of first party insurance [~~must~~] shall be commenced within three years after the inception of the loss.

(2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on insurance policies.

(3) An insurance policy may not:

(a) limit the time for beginning an action on the policy to a time less than that authorized by statute;

(b) prescribe in what court an action may be brought on the policy; or

(c) provide that no action may be brought, subject to permissible arbitration provisions in contracts.

(4) Unless by verified complaint it is alleged that prejudice to the complainant will arise from a delay in bringing suit against an insurer, which prejudice is other than the delay itself, no action may be brought against an insurer on an insurance policy to compel payment under the policy until the earlier of:

(a) 60 days after proof of loss has been furnished as required under the policy;

(b) waiver by the insurer of proof of loss; or

(c) the insurer's denial of full payment.

(5) The period of limitation is tolled during the period in which the parties conduct an appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by the parties.

Section 254. Section 31A-21-403 is amended to read:

31A-21-403. Orders terminating effectiveness of policies.

Upon the commissioner's order, no mass marketed life or accident and health insurance issued by an insurer may continue to be effected on persons in this state. The commissioner may issue an order under this section only if [~~he~~] the commissioner finds, after a hearing, that the total charges for the insurance to the persons insured are unreasonable in relation to the benefits provided. The commissioner's findings under this section [~~must~~] shall be in writing. Orders under this section may direct the insurer to cease effecting the insurance until the total charges for the insurance are found by the commissioner to be reasonable in relation to the benefits provided.

Section 255. Section 31A-22-305 is amended to read:

31A-22-305. Uninsured motorist coverage.

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle:

(i) referred to in the policy; or

(ii) owned by a self-insured; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a motor vehicle covered with lower liability limits than required by Section 31A-22-304; and

(B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified motor vehicle that left the scene of an accident proximately caused by the motor vehicle operator;

(c) a motor vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer for more than 60 days or continues to be disputed for more than 60 days; or

(d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of the motor vehicle is declared insolvent by a court of competent jurisdiction; and

(ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of uninsured motorist coverage shall be equal to the lesser of the limits of the

insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form that:

(i) is filed with the department;

(ii) is provided by the insurer;

(iii) waives the higher coverage;

(iv) reasonably explains the purpose of uninsured motorist coverage; and

(v) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) A self-insured, including a governmental entity, may elect to provide uninsured motorist coverage in an amount that is less than its maximum self-insured retention under Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:

(i) self-insured entity's coverage level; and

(ii) process for filing an uninsured motorist claim.

(d) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(e) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured motorist coverage until the insured, in writing, requests different uninsured motorist coverage from the insurer.

(f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of:

(A) the purpose of uninsured motorist coverage; and

(B) the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of uninsured motorist coverage.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) (i) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least $25,000 per person and $500,000 per accident.

(ii) This coverage is secondary to any other insurance covering an injured covered person.

(c) Uninsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the workers' compensation insurance carrier;

(iii) may not be reduced by any benefits provided by workers' compensation insurance;

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole;

(v) may not be collected for bodily injury or death sustained by a person:

(A) while committing a violation of Section 41-1a-1314;

(B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or

(C) while committing a felony; and

(vi) notwithstanding Subsection (4)(c)(v), may be recovered:

(A) for a person under 18 years of age who is injured within the scope of Subsection (4)(c)(v) but limited to medical and funeral expenses; or

(B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.

(d) As used in this Subsection (4), "motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the motor vehicle occupied by the covered person, the covered person [~~must~~] shall show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one motor vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the motor vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy. Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which the person is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any one other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) except as provided in Subsection (7)(c), a covered person injured while occupying or using a motor vehicle that is not owned, leased, or furnished:

(A) to the covered person;

(B) to the covered person's spouse; or

(C) to the covered person's resident parent or resident sibling.

(c) (i) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:

(A) a dependent minor of parents who reside in separate households; and

(B) injured while occupying or using a motor vehicle that is not owned, leased, or furnished:

(I) to the covered person;

(II) to the covered person's resident parent; or

(III) to the covered person's resident sibling.

(ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of the damages that the limit of liability of each parent's policy of uninsured motorist coverage bears to the total of both parents' uninsured coverage applicable to the accident.

(d) A covered person's recovery under any available policies may not exceed the full amount of damages.

(e) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a single incident of loss under more than one insurance policy.

(ii) Except to the extent permitted by Subsection (6) and this Subsection (7), interpolicy stacking is prohibited for uninsured motorist coverage.

(8) (a) When a claim is brought by a named insured or a person described in Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the claimant may elect to resolve the claim:

(i) by submitting the claim to binding arbitration; or

(ii) through litigation.

(b) Unless otherwise provided in the policy under which uninsured benefits are claimed, the election provided in Subsection (8)(a) is available to the claimant only.

(c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this section without the written consent of the uninsured motorist carrier.

(d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

(ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

(iii) If the parties are unable to agree on a single arbitrator as required under Subsection (8)(d)(ii), the parties shall select a panel of three arbitrators.

(e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional arbitrator to be included in the panel.

(f) Unless otherwise agreed to in writing:

(i) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (8)(d)(i); or

(ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

(A) each party shall pay the fees and costs of the arbitrator selected by that party; and

(B) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (8)(e)(ii).

(g) Except as otherwise provided in this section or unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and 68 of the Utah Rules of Civil Procedure.

(i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

(j) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(k) (i) The amount of an arbitration award may not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies, including applicable uninsured motorist umbrella policies.

(ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all applicable uninsured motorist policies, the arbitration award shall be reduced to an amount equal to the combined uninsured motorist policy limits of all applicable uninsured motorist policies.

(l) The arbitrator or arbitration panel may not decide the issues of coverage or extra-contractual damages, including:

(i) whether the claimant is a covered person;

(ii) whether the policy extends coverage to the loss; or

(iii) any allegations or claims asserting consequential damages or bad faith liability.

(m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or class-representative basis.

(n) If the arbitrator or arbitration panel finds that the action was not brought, pursued, or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees and costs against the party that failed to bring, pursue, or defend the claim in good faith.

(o) An arbitration award issued under this section shall be the final resolution of all claims not excluded by Subsection (8)(l) between the parties unless:

(i) the award was procured by corruption, fraud, or other undue means; or

(ii) either party, within 20 days after service of the arbitration award:

(A) files a complaint requesting a trial de novo in the district court; and

(B) serves the nonmoving party with a copy of the complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

(p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

(q) (i) If the claimant, as the moving party in a trial de novo requested under Subsection (8)(o), does not obtain a verdict that is at least $5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

(ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

(iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q) shall include:

(A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

(B) the costs of expert witnesses and depositions.

(iv) An award of costs under this Subsection (8)(q) may not exceed $2,500.

(r) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

(i) was not fully disclosed in writing prior to the arbitration proceeding; or

(ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.

(s) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith in accordance with Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

(t) Nothing in this section is intended to limit any claim under any other portion of an applicable insurance policy.

(u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist carriers.

(9) (a) Within 30 days after a covered person elects to submit a claim for uninsured motorist

benefits to binding arbitration or files litigation, the covered person shall provide to the uninsured motorist carrier:

(i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

(A) the specific monetary amount of the demand; and

(B) the factual and legal basis and any supporting documentation for the demand;

(ii) a written statement under oath disclosing:

(A) (I) the names and last known addresses of all health care providers who have rendered health care services to the covered person that are material to the claims for which uninsured motorist benefits are sought for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised; and

(II) whether the covered person has seen other health care providers who have rendered health care services to the covered person, which the covered person claims are immaterial to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised that have not been disclosed under Subsection (9)(a)(ii)(A)(I);

(B) (I) the names and last known addresses of all health insurers or other entities to whom the covered person has submitted claims for health care services or benefits material to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised; and

(II) whether the identity of any health insurers or other entities to whom the covered person has submitted claims for health care services or benefits, which the covered person claims are immaterial to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

(C) if lost wages, diminished earning capacity, or similar damages are claimed, all employers of the covered person for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation has been exercised;

(D) other documents to reasonably support the claims being asserted; and

(E) all state and federal statutory lienholders including a statement as to whether the covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act, or if the claim is subject to any other state or federal statutory liens; and

(iii) signed authorizations to allow the uninsured motorist carrier to only obtain records and billings from the individuals or entities disclosed.

(b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary, the uninsured motorist carrier may:

(A) make a request for the disclosure of the identity of the health care providers or health care insurers; and

(B) make a request for authorizations to allow the uninsured motorist carrier to only obtain records and billings from the individuals or entities not disclosed.

(ii) If the covered person does not provide the requested information within 10 days:

(A) the covered person shall disclose, in writing, the legal or factual basis for the failure to disclose the health care providers or health care insurers; and

(B) either the covered person or the uninsured motorist carrier may request the arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be provided if the covered person has elected arbitration.

(iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of the dispute concerning the disclosure and production of records of the health care providers or health care insurers.

(c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice of filing litigation and the demand for payment of uninsured motorist benefits under Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

(A) provide a written response to the written demand for payment provided for in Subsection (9)(a)(i);

(B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person; and

(C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act, or if the claim is subject to any other state or federal statutory liens, tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person less:

(I) if the amount of the state or federal statutory lien is established, the amount of the lien; or

(II) if the amount of the state or federal statutory lien is not established, two times the amount of the medical expenses subject to the state or federal statutory lien until such time as the amount of the state or federal statutory lien is established.

(ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i) is the total amount of the uninsured motorist policy limits, the tendered amount shall be accepted by the covered person.

(d) A covered person who receives a written response from an uninsured motorist carrier as provided for in Subsection (9)(c)(i), may:

(i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all uninsured motorist claims; or

(ii) elect to:

(A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all uninsured motorist claims; and

(B) litigate or arbitrate the remaining claim.

(e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i) as partial payment of all uninsured motorist claims, the final award obtained through arbitration, litigation, or later settlement shall be reduced by any payment made by the uninsured motorist carrier under Subsection (9)(c)(i).

(f) In an arbitration proceeding on the remaining uninsured claims:

(i) the parties may not disclose to the arbitrator or arbitration panel the amount paid under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

(ii) the parties may not disclose the amount of the limits of uninsured motorist benefits provided by the policy.

(g) If the final award obtained through arbitration or litigation is greater than the average of the covered person's initial written demand for payment provided for in Subsection (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection (9)(c)(i), the uninsured motorist carrier shall pay:

(i) the final award obtained through arbitration or litigation, except that if the award exceeds the policy limits of the subject uninsured motorist policy by more than $15,000, the amount shall be reduced to an amount equal to the policy limits plus $15,000; and

(ii) any of the following applicable costs:

(A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

(B) the arbitrator or arbitration panel's fee; and

(C) the reasonable costs of expert witnesses and depositions used in the presentation of evidence during arbitration or litigation.

(h) (i) The covered person shall provide an affidavit of costs within five days of an arbitration award.

(ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to which the uninsured motorist carrier objects.

(B) The objection shall be resolved by the arbitrator or arbitration panel.

(iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii) may not exceed $5,000.

(i) (i) A covered person shall disclose all material information, other than rebuttal evidence, as specified in Subsection (9)(a).

(ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

(j) This Subsection (9) does not limit any other cause of action that arose or may arise against the uninsured motorist carrier from the same dispute.

(k) The provisions of this Subsection (9) only apply to motor vehicle accidents that occur on or after March 30, 2010.

Section 256. Section 31A-22-408 is amended to read:

31A-22-408. Standard Nonforfeiture Law for Life Insurance.

(1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It does not apply to group life insurance.

(2) In the case of policies issued on or after July 1, 1961, no policy of life insurance, except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Subsection (8):

(a) That, in the event of default in any premium payment, after premiums have been paid for at least one full year the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as is specified in this section. In lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or

five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is specified in this section.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

(d) That, if the policy shall have been paid by the completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value in the amount specified in this section.

(e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy with the consent of the commissioner; provided, however, that the policy shall remain in full force and effect until the insurer has made the payment.

(3) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Subsection (2), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of: (a) the then present value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy.

Provided, however, that for any policy issued on or after the operative date of Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of Subsection (6)(d) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age 71, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse. Any cash surrender value available within 30 days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value

then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) (a) This Subsection (5)(a) does not apply to policies issued on or after the operative date of Subsection (6)(d) as defined therein. Except as provided in Subsection (5)(c), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of: (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2% of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount if the amount of insurance varies with duration of the policy; (iii) 40% of the adjusted premium for the first policy year; and (iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in Subsections (5)(a)(iii) and (iv), no adjusted premium shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to: (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) of this [~~paragraph~~] Subsection (5)(c) being calculated separately and as specified in Subsections (5)(a) and (b) except that, for the purposes of (ii), (iii), and (iv) of Subsection (5)(a), the amount of insurance or equivalent uniform amount of insurance used in calculation of the adjusted premiums referred to in (ii) of this [~~paragraph~~] Subsection (5)(c) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i) of this [~~paragraph~~] Subsection (5)(c).

(d) Except as otherwise provided in Subsection (6), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before April 2, 1980, and the rate of interest [~~shall not~~] may not exceed 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further,

that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(b) Any company may file with the commissioner a written notice of its election to comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966. After filing such notice, then upon such specified date, which is the operative date of Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of Subsection (6)(a) for such company is January 1, 1966.

(c) This Subsection (6)(c) does not apply to industrial policies issued after the operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2, 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

Any company may file with the commissioner a written notice of its election to comply with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968. After filing such notice, then upon that specified date, which is the operative date of this Subsection (6) (c) for such company, this Subsection (6)(c) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this [~~paragraph~~] Subsection (6)(c) for such company shall be January 1, 1968.

(d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date of this subsection as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to the sum of: (A) the then present value of the future guaranteed benefits provided for by the policy; (B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (C) 125% of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (C), no nonforfeiture net level premium shall be considered to exceed 4% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(ii) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of: (I) the then present value of the then future guaranteed benefits provided for by the

policy and (II) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(v) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of: (A) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (B) 125% of the increase, if positive, in the nonforfeiture net level premium.

(vi) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where

(A) equals the sum of:

(I) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(II) the present value of the increase in future guaranteed benefits provided for by the policy; and

(B) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(viii) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of: (A) the Commissioner's 1980 Standard Ordinary Mortality Table; or (B) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies issued in that calendar year. Provided, however, that:

(I) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(II) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(III) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(IV) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(V) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(VI) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard, may be substituted for the Commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioner's 1980 Extended Term Insurance Table.

(VII) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioner's 1961 Industrial Extended Term Insurance Table.

(ix) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearest [~~1/~~4] one-fourth of 1%.

(x) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(xi) After the effective date of this Subsection (6)(d), any company may, at any time before January 1, 1989, file with the commissioner a written notice of its election to comply with the provisions of this subsection with regard to any number of plans of insurance after a specified date before January 1, 1989, which specified date shall be the operative date of this Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this subsection operative before January 1, 1989, for fewer than all plans, the company [~~must~~] shall comply with rules adopted by the commissioner. There is no limit to the number of times this election may be made. If the company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(7) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on the estimates of future experience, or in the case of any plan of life insurance which is of such nature that minimum values cannot be determined by the methods described in Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:

(a) the insurer shall demonstrate to the satisfaction of the commissioner [~~must be satisfied~~] that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d);

(b) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(c) the cash surrender values and paid-up nonforfeiture benefits provided by [~~such~~] the plan [~~must not~~] may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by rules adopted by the commissioner.

(8) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in Subsections (3), (4), (5), and (6) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, may not be less than the amounts used to provide such additions. Notwithstanding the provisions of Subsection (3), additional benefits payable: (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, if uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(9) This Subsection (9), in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of: (a) the greater of zero and the basic cash value hereinafter specified, and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5), whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) [~~must~~] shall be the same percentage for each policy year between the second policy anniversary and the later of: (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) [~~must~~] shall be such that no percentage after the later of the two policy anniversaries specified in

Subsection (9)(a) may apply to fewer than five consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic value.

All adjusted premiums and present values referred to in this Subsection (9) shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this law. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this Subsection (9).

(10) This section does not apply to any of the following:

(a) reinsurance;

(b) group insurance;

(c) pure endowment;

(d) an annuity or reversionary annuity contract;

(e) a term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(f) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Subsections (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance, and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(g) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6) exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or

(h) a policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age of expiry for a joint term insurance policy shall be the age of expiry of the oldest life.

(11) The commissioner may adopt rules interpreting, describing, and clarifying the application of this nonforfeiture law to any form of life insurance for which the interpretation, description, or clarification is [~~deemed~~] considered necessary by the commissioner, including [~~but not limited to,~~] unusual and new forms of life insurance.

Section 257. Section 31A-22-610.5 is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, "child" has the same meaning as defined in Section 78B-12-102.

(2) (a) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent may not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(d) An individual health insurance policy, group health insurance policy, or health maintenance organization shall continue in force coverage for a dependent through the last day of the month in which the dependent ceases to be a dependent:

(i) if premiums are paid; and

(ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1, or 31A-30-107.3.

(3) An individual or group accident and health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

(d) the policy has not been terminated since the dependent's coverage was terminated.

(4) (a) When a parent is required by a court or administrative order to provide health insurance coverage for a child, an accident and health insurer may not deny enrollment of a child under the accident and health insurance plan of the child's parent on the grounds the child:

(i) was born out of wedlock and is entitled to coverage under Subsection (5);

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent's policy;

(iii) is not claimed as a dependent on the parent's federal tax return; or

(iv) does not reside with the parent or in the insurer's service area.

(b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of the accident and health insurance plan contract pertaining to services received outside of an insurer's service area. A health maintenance organization [~~must~~] shall comply with Section 31A-8-502.

(5) When a child has accident and health coverage through an insurer of a noncustodial parent, and when requested by the noncustodial or custodial parent, the insurer shall:

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection (5)(b) directly to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid agency.

(6) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program; and

(c) (i) when the child is covered by an individual policy, not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(A) the court or administrative order is no longer in effect; or

(B) the child is or will be enrolled in comparable accident and health coverage through another insurer which will take effect not later than the effective date of disenrollment; or

(ii) when the child is covered by a group policy, not disenroll or eliminate coverage of the child unless the employer is provided with satisfactory written evidence, which evidence is also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

(7) An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for accident and health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

(9) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

(10) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

(11) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer with adequate information to comply with this section; and

(c) the premium shall be paid when due.

(12) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

(13) The commissioner shall adopt rules interpreting and implementing this section with regard to out-of-area court ordered dependent coverage.

Section 258. Section 31A-22-611 is amended to read:

31A-22-611. Coverage for children with a disability.

(1) For the purposes of this section:

(a) "Disabled dependent" means a child who is and continues to be both:

(i) unable to engage in substantial gainful employment to the degree that the child can achieve economic independence due to a medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; and

(ii) chiefly dependent upon an insured for support and maintenance since the child reached the age specified in Subsection 31A-22-610.5(2).

[~~(c)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

(i) mental retardation;

(ii) organic brain syndrome;

(iii) emotional or mental illness; or

(iv) specific learning disabilities as determined by the insurer.

[~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or disfigurement, or anatomical loss affecting one or more of the following body systems:

(i) neurological;

(ii) musculoskeletal;

(iii) special sense organs;

(iv) respiratory organs;

(v) speech organs;

(vi) cardiovascular;

(vii) reproductive;

(viii) digestive;

(ix) genito-urinary;

(x) hemic and lymphatic;

(xi) skin; or

(xii) endocrine.

(2) The insurer may require proof of the incapacity and dependency be furnished by the person insured under the policy within 30 days of the effective date or the date the child attains the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the insurer may not require proof more often than annually after the two-year period immediately following attainment of the limiting age by the disabled dependent.

(3) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall, upon application, provide coverage for all unmarried disabled dependents who have been continuously covered, with no break of more than 63 days, under any accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

(4) Every accident and health insurance policy or contract that provides coverage of a disabled dependent [~~shall not~~] may not terminate the policy due to an age limitation.

Section 259. Section 31A-22-613.5 is amended to read:

31A-22-613.5. Price and value comparisons of health insurance -- Basic Health Care Plan.

(1) (a) This section applies to all health benefit plans.

(b) Subsection (2) applies to:

(i) all health benefit plans; and

(ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

(2) (a) The commissioner shall promote informed consumer behavior and responsible health benefit plans by requiring an insurer issuing a health benefit plan to:

(i) provide to all enrollees, prior to enrollment in the health benefit plan written disclosure of:

(A) restrictions or limitations on prescription drugs and biologics including:

(I) the use of a formulary;

(II) co-payments and deductibles for prescription drugs; and

(III) requirements for generic substitution;

(B) coverage limits under the plan; and

(C) any limitation or exclusion of coverage including:

(I) a limitation or exclusion for a secondary medical condition related to a limitation or exclusion from coverage; and

(II) easily understood examples of a limitation or exclusion of coverage for a secondary medical condition; and

(ii) provide the commissioner with:

(A) the information described in Subsections 63M-1-2506(3) through (6) in the standardized

electronic format required by Subsection 63M-1-2506(1); and

(B) information regarding insurer transparency in accordance with Subsection (5).

(b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to the commissioner:

(i) upon commencement of operations in the state; and

(ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):

(A) treatment policies;

(B) practice standards;

(C) restrictions;

(D) coverage limits of the insurer's health benefit plan or health insurance policy; or

(E) limitations or exclusions of coverage including a limitation or exclusion for a secondary medical condition related to a limitation or exclusion of the insurer's health insurance plan.

(c) An insurer shall provide the enrollee with notice of an increase in costs for prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):

(i) either:

(A) in writing; or

(B) on the insurer's website; and

(ii) at least 30 days prior to the date of the implementation of the increase in cost, or as soon as reasonably possible.

(d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make available to prospective enrollees and maintain evidence of the fact of the disclosure of:

(i) the drugs included;

(ii) the patented drugs not included;

(iii) any conditions that exist as a precedent to coverage; and

(iv) any exclusion from coverage for secondary medical conditions that may result from the use of an excluded drug.

(e) (i) The department shall develop examples of limitations or exclusions of a secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).

(ii) Examples of a limitation or exclusion of coverage provided under Subsection (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact situation to fall within the description of an example does not, by itself, support a finding of coverage.

(3) An insurer who offers a health benefit plan under Chapter 30, Individual, Small Employer, and Group Health Insurance Act, shall offer a basic health care plan subject to the open enrollment provisions of Chapter 30, Individual, Small Employer, and Group Health Insurance Act, that:

(a) is a federally qualified high deductible health plan;

(b) has a deductible that is within $250 of the lowest deductible that qualifies under a federally qualified high deductible health plan, as adjusted by federal law; and

(c) does not exceed an annual out of pocket maximum equal to three times the amount of the annual deductible.

(4) The commissioner:

(a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to the Health Insurance Exchange created under Section 63M-1-2504; and

(b) may request information from an insurer to verify the information submitted by the insurer under this section.

(5) The commissioner shall:

(a) convene a group of insurers, a member representing the Public Employees' Benefit and Insurance Program, consumers, and an organization described in Subsection 31A-22-614.6(3)(b), to develop information for consumers to compare health insurers and health benefit plans on the Health Insurance Exchange, which shall include consideration of:

(i) the number and cost of an insurer's denied health claims;

(ii) the cost of denied claims that is transferred to providers;

(iii) the average out-of-pocket expenses incurred by participants in each health benefit plan that is offered by an insurer in the Health Insurance Exchange;

(iv) the relative efficiency and quality of claims administration and other administrative processes for each insurer offering plans in the Health Insurance Exchange; and

(v) consumer assessment of each insurer or health benefit plan;

(b) adopt an administrative rule that establishes:

(i) definition of terms;

(ii) the methodology for determining and comparing the insurer transparency information;

(iii) the data, and format of the data, that an insurer [~~must~~] shall submit to the department in order to facilitate the consumer comparison on the Health Insurance Exchange in accordance with Section 63M-1-2506; and

(iv) the dates on which the insurer [~~must~~] shall submit the data to the department in order for the department to transmit the data to the Health Insurance Exchange in accordance with Section 63M-1-2506; and

(c) implement the rules adopted under Subsection (5)(b) in a manner that protects the business confidentiality of the insurer.

Section 260. Section 31A-22-618.5 is amended to read:

31A-22-618.5. Health benefit plan offerings.

(1) The purpose of this section is to increase the range of health benefit plans available in the small group, small employer group, large group, and individual insurance markets.

(2) A health maintenance organization that is subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) shall offer to potential purchasers at least one health benefit plan that is subject to the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans; and

(b) may offer to a potential purchaser one or more health benefit plans that:

(i) are not subject to one or more of the following:

(A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

(B) the limitation on point of service products in Subsections 31A-8-408(3) through (6);

(C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in Section 31A-8-101; or

(D) coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate enacted after January 1, 2009; and

(ii) when offering a health plan under this section, provide coverage for an emergency medical condition as required by Section 31A-22-627 as follows:

(A) within the organization's service area, covered services shall include health care services from non-affiliated providers when medically necessary to stabilize an emergency medical condition; and

(B) outside the organization's service area, covered services shall include medically necessary health care services for the treatment of an emergency medical condition that are immediately required while the enrollee is outside the geographic limits of the organization's service area.

(3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that groups providers into the following reimbursement levels:

(i) tier one contracted providers;

(ii) tier two contracted providers who the insurer [~~must~~] shall reimburse at least 75% of tier one providers; and

(iii) one or more tiers of non-contracted providers; and

(b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is not subject to Section 31A-22-618;

(c) beginning July 1, 2012, may offer products under Subsection (3)(a) that:

(i) are not subject to Subsection 31A-22-617(2); and

(ii) are subject to the reimbursement requirements in Section 31A-8-501;

(d) when offering a health plan under this Subsection (3), shall provide coverage of emergency care services as required by Section 31A-22-627 by providing coverage at a reimbursement level of at least 75% of tier one providers; and

(e) are not subject to coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that an insurer offers one plan that covers a mandate enacted after January 1, 2009.

(4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under Subsection (2)(b).

(5) (a) Any difference in price between a health benefit plan offered under Subsections (2)(a) and (b) shall be based on actuarially sound data.

(b) Any difference in price between a health benefit plan offered under Subsections (3)(a) and (b) shall be based on actuarially sound data.

(6) Nothing in this section limits the number of health benefit plans that an insurer may offer.

Section 261. Section 31A-22-625 is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, before reaching a maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, except that if separate out-of-pocket limits are

established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on:

(A) episodic limits;

(B) inpatient or outpatient service limits; or

(C) maximum out-of-pocket limits.

(c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(d) (i) "Mental health condition" means a condition or disorder involving mental illness that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) a marital or family problem;

(B) a social, occupational, religious, or other social maladjustment;

(C) a conduct disorder;

(D) a chronic adjustment disorder;

(E) a psychosexual disorder;

(F) a chronic organic brain syndrome;

(G) a personality disorder;

(H) a specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-5, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition [~~must~~] shall be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility:

(A) licensed or otherwise authorized to provide mental health services pursuant to:

(I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

(B) that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of insurance policies that include:

(i) no mental health coverage;

(ii) 50/50 mental health coverage;

(iii) catastrophic mental health coverage; and

(iv) coverage that exceeds the minimum requirements of this section.

(7) This section may not be construed as discouraging or otherwise preventing an insurer from providing mental health coverage in connection with an individual insurance policy.

(8) This section shall be repealed in accordance with Section 63I-1-231.

Section 262. Section 31A-22-634 is amended to read:

31A-22-634. Prohibition against certain use of Social Security number -- Exceptions -- Applicability of section.

(1) As used in this section:

(a) "Insurer" means:

(i) insurers governed by this part as described in Section 31A-22-600, and includes:

(A) a health maintenance organization; and

(B) a third-party administrator that is subject to this title; and

(ii) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(b) "Publicly display" or "publicly post" means to intentionally communicate or otherwise make available to the general public.

(2) An insurer or its subcontractors, including a pharmacy benefit manager, [~~shall not~~] may not do any of the following:

(a) publicly display or publicly post in any manner an individual's Social Security number; or

(b) print an individual's Social Security number on any card required for the individual to access products or services provided or covered by the insurer.

(3) This section does not prevent the collection, use, or release of a Social Security number as required by state or federal law, or the use of a Social Security number for internal verification or administrative purposes, or the release of a Social Security number to a health care provider for claims administration purposes, or as part of the verification, eligibility, or payment process.

(4) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, an insurer that complies with the federal law shall be considered in compliance with this section.

(5) An insurer [~~must~~] shall comply with the provisions of this section by July 1, 2004.

(6) (a) An insurer may obtain an extension for compliance with the requirements of this section in accordance with Subsections (6)(b) and (c).

(b) The request for extension:

(i) [~~must~~] shall be submitted in writing to the department prior to July 1, 2004; and

(ii) [~~must~~] shall provide an explanation as to why the insurer cannot comply with the requirements of this section by July 1, 2004.

(c) The commissioner shall grant a request for extension:

(i) for a period of time not to exceed March 1, 2005; and

(ii) if the commissioner finds that the explanation provided under Subsection (6)(b)(ii) is a reasonable explanation.

Section 263. Section 31A-22-636 is amended to read:

31A-22-636. Standardized health benefit plan cards.

(1) As used in this section, "insurer" means:

(a) an insurer governed by this part as described in Section 31A-22-600;

(b) a health maintenance organization governed by Chapter 8, Health Maintenance Organizations and Limited Health Benefit Plans;

(c) a third party administrator; and

(d) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health, medical, or conversion policy offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(2) In accordance with Subsection (3), an insurer [~~must~~] shall use and issue a health benefit plan information card for the insurer's enrollees upon the purchase or renewal of, or enrollment in, a health benefit plan on or after July 1, 2010.

(3) The health benefit plan card shall include:

(a) the covered person's name;

(b) the name of the carrier and the carrier network name;

(c) the contact information for the carrier or health benefit plan administrator;

(d) general information regarding copayments and deductibles; and

(e) an indication of whether the health benefit plan is regulated by the state.

(4) (a) The commissioner shall work with the Department of Health, the Health Data Authority, health care providers groups, and with state and national organizations that are developing uniform standards for the electronic exchange of health insurance claims or uniform standards for the electronic exchange of clinical health records.

(b) When the commissioner determines that the groups described in Subsection (4)(a) have reached a consensus regarding the electronic technology and standards necessary to electronically exchange insurance enrollment and coverage information, the commissioner shall begin the rulemaking process under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adopt standardized electronic interchange technology.

(c) After rules are adopted under Subsection (4)(a), health care providers and their licensing boards under Title 58, Occupations and Professions, and health facilities licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, shall work together to implement the adoption of card swipe technology.

Section 264. Section 31A-22-637 is amended to read:

31A-22-637. Health care provider payment information -- Notice of admissions.

(1) For purposes of this section, "insurer" is as defined in Section 31A-22-636.

(2) (a) An insurer shall provide its health care providers who are under contract with the insurer access to current information necessary for the health care provider to determine:

(i) the effect of procedure codes on payment or compensation before a claim is submitted for a procedure;

(ii) the plans and carrier networks that the health care provider is subject to as part of the contract with the carrier; and

(iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms under which the provider will be paid for health care services.

(b) The information required by Subsection (2)(a) may be provided through a website, and if requested by the health care provider, notice of the updated website shall be provided by the carrier.

(3) (a) An insurer [~~shall not~~] may not require a health care provider by contract, reimbursement procedure, or otherwise to notify the insurer of a hospital in-patient emergency admission within a period of time that is less than one business day of the hospital in-patient admission, if compliance with the notification requirement would result in notification by the health care provider on a weekend or federal holiday.

(b) Subsection (3)(a) does not prohibit the applicability or administration of other contract provisions between an insurer and a health care provider that require pre-authorization for scheduled in-patient admissions.

Section 265. Section 31A-22-716 is amended to read:

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

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

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

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

Section 266. Section 31A-22-722.5 is amended to read:

31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment Act.

(1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to contact the individual's employer or the insurer for the employer to participate in a transition period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

(b) An individual has the right under Subsection (1)(a) if the individual:

(i) was involuntarily terminated from employment during the period of time identified in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

(ii) is eligible for COBRA premium assistance under Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

(iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time of termination;

(iv) elected Utah mini-Cobra; and (v) voluntarily dropped coverage, which includes dropping coverage through non-payment of premiums, between December 1, 2009 and February 1, 2010.

(2) (a) An individual or the employer of the individual shall contact the insurer and inform the insurer that the individual wants to maintain coverage and pay retroactive premiums under a transition period for mini-COBRA coverage in accordance with the provisions of Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

(b) An individual or an employer on behalf of an eligible individual [~~must~~] shall submit the applicable forms and premiums for coverage under Subsection (1) to the insurer in accordance with the provisions of Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 11-5), as amended.

(3) An insured has the right to extend the employee's coverage under mini-cobra with the current employer's group policy beyond the 12 months to the period of time the insured is eligible to receive assistance in accordance with Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as amended.

(4) An insurer that violates this section is subject to penalties in accordance with Section 31A-2-308.

Section 267. Section 31A-22-723 is amended to read:

31A-22-723. Group and blanket conversion coverage.

(1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection (3), all policies of accident and health insurance offered on a group basis under this title, or Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated is entitled to choose a converted individual policy in accordance with this section and Section 31A-22-724.

(2) A person who has lost group coverage may elect conversion coverage with the insurer that provided prior group coverage if the person:

(a) has been continuously covered for a period of three months by the group policy or the group's preceding policies immediately prior to termination;

(b) has exhausted either:

(i) Utah mini-COBRA coverage as required in Section 31A-22-722;

(ii) federal COBRA coverage; or

(iii) alternative coverage under Section 31A-22-724;

(c) has not acquired or is not covered under any other group coverage that covers all preexisting conditions, including maternity, if the coverage exists; and

(d) resides in the insurer's service area.

(3) This section does not apply if the person's prior group coverage:

(a) is a stand alone policy that only provides one of the following:

(i) catastrophic benefits;

(ii) aggregate stop loss benefits;

(iii) specific stop loss benefits;

(iv) benefits for specific diseases;

(v) accidental injuries only;

(vi) dental; or

(vii) vision;

(b) is an income replacement policy;

(c) was terminated because the insured:

(i) failed to pay any required individual contribution;

(ii) performed an act or practice that constitutes fraud in connection with the coverage; or

(iii) made intentional misrepresentation of material fact under the terms of coverage; or

(d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or 31A-30-107(2)(a).

(4) (a) The employer shall provide written notification of the right to an individual conversion policy within 30 days of the insured's termination of coverage to:

(i) the terminated insured;

(ii) the ex-spouse; or

(iii) in the case of the death of the insured:

(A) the surviving spouse; and

(B) the guardian of any dependents, if different from a surviving spouse.

(b) The notification required by Subsection (4)(a) shall:

(i) be sent by first class mail;

(ii) contain the name, address, and telephone number of the insurer that will provide the conversion coverage; and

(iii) be sent to the insured's last-known address as shown on the records of the employer of:

(A) the insured;

(B) the ex-spouse; and

(C) if the policy terminates by reason of the death of the insured to:

(I) the surviving spouse; and

(II) the guardian of any dependents, if different from a surviving spouse.

(5) (a) An insurer is not required to issue a converted policy which provides benefits in excess of those provided under the group policy from which conversion is made.

(b) Except as provided in Subsection (5)(c), if the conversion is made from a health benefit plan, the employee or member shall be offered:

(i) at least the basic benefit plan as provided in Section 31A-22-613.5 through December 31, 2009; and

(ii) beginning January 1, 2010, only the alternative coverage as provided in Subsection 31A-22-724(1)(a).

(c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy.

(6) Written application for the converted policy shall be made and the first premium paid to the insurer no later than 60 days after termination of the group accident and health insurance.

(7) The converted policy shall be issued without evidence of insurability.

(8) (a) The initial premium for the converted policy for the first 12 months and subsequent renewal premiums shall be determined in accordance with premium rates applicable to age, class of risk of the person, and the type and amount of insurance provided.

(b) The initial premium for the first 12 months may not be raised based on pregnancy of a covered insured.

(c) The premium for converted policies shall be payable monthly or quarterly as required by the insurer for the policy form and plan selected, unless another mode or premium payment is mutually agreed upon.

(9) The converted policy becomes effective at the time the insurance under the group policy terminates.

(10) (a) A newly issued converted policy covers the employee or the member and [~~must~~] shall also cover all dependents covered by the group policy at the date of termination of the group coverage.

(b) The only dependents that may be added after the policy has been issued are children and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

(c) At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(11) (a) To the extent the group policy provided maternity benefits, the conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group policy or the conversion policy until termination of a pregnancy that exists on the date of conversion if one of the following is pregnant on the date of the conversion:

(i) the insured;

(ii) a spouse of the insured; or

(iii) a dependent of the insured.

(b) The requirements of this Subsection (11) do not apply to a pregnancy that occurs after the date of conversion.

(12) Except as provided in this Subsection (12), a converted policy is renewable with respect to all individuals or dependents at the option of the insured. An insured may be terminated from a converted policy for the following reasons:

(a) a dependent is no longer eligible under the policy;

(b) for a network plan, if the individual no longer lives, resides, or works in:

(i) the insured's service area; or

(ii) the area for which the covered carrier is authorized to do business;

(c) the individual fails to pay premiums or contributions in accordance with the terms of the converted policy, including any timeliness requirements;

(d) the individual performs an act or practice that constitutes fraud in connection with the coverage;

(e) the individual makes an intentional misrepresentation of material fact under the terms of the coverage; or

(f) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(13) Conditions pertaining to health may not be used as a basis for classification under this section.

(14) An insurer is only required to offer a conversion policy that complies with Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1, may discontinue any other conversion policy if:

(a) the discontinued conversion policy is discontinued uniformly without regard to any health related factor;

(b) any affected individual is provided with 90 days' advanced written notice of the discontinuation of the existing conversion policy;

(c) the policy holder is offered the insurer's conversion policy that complies with Subsection 31A-22-724(1)(b); and

(d) the policy holder is not re-rated for purposes of premium calculation.

Section 268. Section 31A-22-806 is amended to read:

31A-22-806. Provisions of policies and certificates.

(1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance delivered to the debtor.

(2) Each of these types of policies or certificates shall, in addition to satisfying the requirements of Chapter 21, Insurance Contracts in General, set forth:

(a) the name and home office address of the insurer;

(b) the identity, by name or otherwise, of the persons insured;

(c) the rate, premium, or amount of payment by the debtor, if any, given separately for credit life insurance and credit accident and health insurance;

(d) a description of the amount, term, and coverage, including any exceptions, limitations, and restrictions;

(e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness; and

(f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(3) Except as provided in Subsection (4), the policy or certificate shall be delivered to the debtor within 30 days after the date when the indebtedness is incurred.

(4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the date the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance shall be delivered to the debtor.

(b) The application or the notice shall be signed by the debtor and shall set forth:

(i) the name and home office address of the insurer;

(ii) the name of the debtor;

(iii) the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; and

(iv) the amount, term, and a brief description of the coverage provided.

(c) The copy of the application for or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit statement of account or instrument, unless the information required by this Subsection (4)(c) is prominently set forth therein.

(d) Upon acceptance of the insurance by the insurer and within 60 days after the later of the date on which the indebtedness is incurred or the date on which the credit life or credit accident and health policy was purchased, the insurer shall deliver the individual policy or group certificate of insurance to the debtor.

(e) The application or notice shall state that upon acceptance by the insurer, the insurance is effective as provided in Section 31A-22-805.

(5) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

(6) If a creditor makes available to the debtors more than one plan of credit life or credit accident and health insurance, all debtors [~~must~~] shall be informed of the plans applicable to the specific type of loan transaction for which the debtor is applying.

Section 269. Section 31A-22-1406 is amended to read:

31A-22-1406. Preexisting conditions.

(1) A long-term care insurance policy or certificate [~~shall not~~] may not use a definition of a preexisting condition which is more restrictive than the following: "Preexisting condition means a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person."

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The commissioner may extend the preexisting condition periods provided in Subsections (1) and (2) as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(4) (a) The definition of preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and from underwriting in accordance with that insurer's established underwriting standards on the basis of the answers on that application.

(b) Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in Subsection (2) expires.

(c) A long-term care insurance policy or certificate may not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical condition beyond the waiting period described in Subsection (2).

Section 270. Section 31A-22-1409 is amended to read:

31A-22-1409. Statements of coverage.

(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the applicant to the document and its purpose.

(2) The commissioner may prescribe a standard format of an outline of coverage, including style, arrangement, and overall appearance, and the content.

(3) In the case of agent solicitations an agent [~~must~~] shall deliver the outline of coverage prior to the presentation of any application or enrollment form.

(4) In the case of direct response solicitations, the outline of coverage [~~must~~] shall be presented in

conjunction with any application or enrollment form.

(5) An outline of coverage under this section shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium;

(d) a specific description of continuation or conversion provisions of group coverage;

(e) a statement that the outline of coverage is not a contract of insurance but a summary only and that the policy or group master policy contains governing contractual provisions;

(f) a description of the terms under which the policy or certificate may be returned and premium refunded;

(g) a brief description of the relationship of cost of care and benefits; and

(h) a statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified, long-term care insurance contract under Section 7702B(b), Internal Revenue Code.

(6) A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement that the group master policy determines governing contractual provisions; and

(d) a statement that any long-term care inflation protection option required by rule is not available under the policy.

(7) If an application for a long-term care contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than 30 days after the date of approval.

(8) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request. However, the insurer shall deliver the summary to the applicant no later than at the time of policy delivery regardless of request. In addition to complying with all applicable requirements, the summary shall also include:

(a) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) an illustration for each covered person of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any;

(c) any exclusions, reductions, and limitations on benefits of long-term care; and

(d) if applicable to the policy type, the summary shall also include:

(i) a disclosure of the effects of exercising other rights under the policy;

(ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

(iii) current and projected maximum lifetime benefits.

(9) The provisions of the policy summary required under Subsection (8) may be incorporated into:

(a) a basic illustration; or

(b) the life insurance policy summary required to be delivered in accordance with rule.

Section 271. Section 31A-23a-501 is amended to read:

31A-23a-501. Licensee compensation.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee; or

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or

(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or

(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or

(B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) [~~must~~] shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation and the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(4) (a) For purposes of this Subsection (4), "producer" includes:

(i) a producer;

(ii) an affiliate of a producer; or

(iii) a consultant.

(b) Beginning January 1, 2010, in addition to any other disclosures required by this section, a producer may not accept or receive any compensation from an insurer or third party administrator for the placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's purchase of the health benefit plan the producer:

(i) except as provided in Subsection (4)(c), discloses in writing to the customer that the producer will receive compensation from the insurer or third party administrator for the

placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure; and

(ii) except as provided in Subsection (4)(c):

(A) obtains the customer's signed acknowledgment that the disclosure under Subsection (4)(b)(i) was made to the customer; or

(B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made to the customer; and

(II) keeps the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.

(c) If the compensation to the producer from an insurer or third party administrator is for the renewal of a health benefit plan, once the producer has made an initial disclosure that complies with Subsection (4)(b), the producer does not have to disclose compensation received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal period immediately following 36 months after the initial disclosure.

(d) (i) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the customer is in force, maintain a copy of:

(A) the signed acknowledgment described in Subsection (4)(b)(i); or

(B) the signed statement described in Subsection (4)(b)(ii).

(ii) The standard application developed in accordance with Section 31A-22-635 shall include a place for a producer to provide the disclosure required by this Subsection (4), and if completed, shall satisfy the requirement of Subsection (4)(d)(i).

(e) Subsection (4)(b)(ii) does not apply to:

(i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or

(ii) the placement of insurance in a secondary or residual market.

(5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.

(6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

Section 272. Section 31A-23a-602 is amended to read:

31A-23a-602. Required contract provisions.

A person, firm, association, or corporation acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, the contract specifies the division of shared responsibilities. The written contract shall contain the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer at least monthly.

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and the right to copy all accounts and records related to its business and shall have access to all books, bank accounts, and records of the managing general agent. The records shall be retained according to Section 31A-23a-412 and shall be kept in a form usable by the insurer and the commissioner.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules. The contract shall contain appropriate underwriting guidelines including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks which may be written;

(d) maximum limits of liability;

(e) applicable exclusions;

(f) territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims [~~must~~] shall be reported to the company in a timely manner.

(b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the company;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment the lesser of an amount set by the commissioner or an amount set by the company.

(c) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract [~~must~~] shall address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business, and five years after they are earned on casualty business, but not until the profits have been verified by a review conducted pursuant to Section 31A-23a-603.

(10) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which [~~he~~] the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which [~~shall not~~] may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer; if prior approval is given, a report [~~must~~] shall be promptly forwarded to the insurer;

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

Section 273. Section 31A-23a-702 is amended to read:

31A-23a-702. Minimum standards.

(1) This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding Subsection (1), this section does not apply if:

(a) the controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance placed;

(b) the controlling producer accepts insurance placements only from nonaffiliated producers who are not controlling producers, and not directly from insureds; and

(c) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer that specifies the responsibilities of each party and that has been approved by the board of directors of the insurer. The contract shall contain the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer at least monthly. The due date shall be fixed so that premiums or premium installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance with applicable provisions of this title. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract may not be assigned in whole or in part by the controlling producer.

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, and manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) The contract shall state the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business and services placed with the controlled insurer by producers other than controlling producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and services" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned, and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Subsection (5).

(j) The contract shall include a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit to each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and [~~shall not~~] may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer. However, the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(4) Each controlled insurer shall have an audit committee of the board of directors. The audit committee shall annually meet to review the adequacy of the insurer's loss reserves. The committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or any other independent loss reserve specialists acceptable to the commissioner.

(5) (a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the commissioner. The opinion shall report loss ratios for each line of business written and shall attest to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer including losses incurred but not reported.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Section 274. Section 31A-23a-806 is amended to read:

31A-23a-806. Prohibited acts.

(1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) The reinsurance intermediary-manager may not commit the reinsurer to participate in reinsurance syndicates.

(3) The reinsurance intermediary-manager may not appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which [~~he~~] the producer is appointed.

(4) The reinsurance intermediary-manager may not, without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) The reinsurance intermediary-manager may not collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report [~~must~~] shall be promptly forwarded to the reinsurer.

(6) The reinsurance intermediary-manager may not jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

(7) The reinsurance intermediary-manager may not appoint a subreinsurance intermediary-manager.

Section 275. Section 31A-27a-202 is amended to read:

31A-27a-202. Commencement of formal delinquency proceeding.

(1) A formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.

(2) (a) The petition required by Subsection (1):

(i) shall state:

(A) the grounds upon which the proceeding is based; and

(B) the relief requested; and

(ii) may include a request for restraining orders and injunctive relief as described in Section 31A-27a-108.

(b) Upon the filing of a petition, the commissioner shall forward a notice of the petition by first-class mail or electronic communication, as permitted by the receivership court, to the commissioners and guaranty associations in states in which the insurer did business.

(3) (a) A petition that requests injunctive relief:

(i) shall be verified by the commissioner or the commissioner's designee; and

(ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

(b) The commissioner shall provide only the notice the receivership court requires.

(4) If a temporary restraining order is requested:

(a) the receivership court may issue an initial order containing the relief requested;

(b) the order shall state the time and date of its issuance;

(c) the receivership court shall set a time and date for the return of summons:

(i) not more than 10 days from the time and date the initial order is issued; and

(ii) at which time the person proceeded against may appear before the receivership court for a summary hearing; and

(d) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.

(5) (a) If no temporary restraining order is requested, the receivership court shall cause summons to be issued.

(b) The summons shall specify:

(i) a return date not more than 30 days after the day on which the summons is issued; and

(ii) that an answer [~~must~~] shall be filed at or before the return date.

Section 276. Section 31A-27a-205 is amended to read:

31A-27a-205. Decision and appeals.

(1) The receivership court shall enter judgment on the petition to commence formal delinquency proceeding within 15 days after the day on which the evidence is concluded.

(2) (a) An order entered pursuant to Subsection (1) is final when entered.

(b) An appeal shall be:

(i) handled on an expedited basis; and

(ii) taken within five days of the day on which judgment is entered.

(3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order has full force and effect and the receiver shall carry out the order's terms and this chapter.

(b) A request for reconsideration, review, or appeal, or posting of a bond, may not dissolve or stay the judgment.

(4) (a) The following motions [~~must~~] shall first be presented to the receivership court:

(i) a motion for a stay of a judgment;

(ii) a motion for approval of a supersedes bond; or

(iii) a motion for other relief pending appeal.

(b) Except for a grant of a petition for rehabilitation which shall remain in effect pending

a decision on appeal, during the pendency of an appeal the receivership court may do any of the following in accordance with the Utah Rules of Civil Procedure:

(i) suspend an order entered under Subsection (1);

(ii) modify an order entered under Subsection (1); or

(iii) make any other appropriate order governing the enforceability of an order entered under Subsection (1).

(c) The receivership court or an appellate court to which the matter is presented may condition any relief it grants under this Subsection (4) on the filing of a bond or other appropriate security with the receivership court.

(5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal regardless of the appeal's ultimate disposition.

(6) The reversal or modification on appeal of an order of rehabilitation or liquidation does not affect the validity of an act of the receiver pursuant to the order unless the order is stayed pending appeal.

Section 277. Section 31A-27a-502 is amended to read:

31A-27a-502. Recovery from affiliates.

(1) (a) If a receivership order is entered under this chapter, the receiver appointed under the receivership order may recover on behalf of the insurer from an affiliate as defined in Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years preceding the filing date of the delinquency proceedings.

(b) A person disputing that person's status as an affiliate [~~must~~] shall prove by clear and convincing evidence the person's nonaffiliate status.

(c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

(2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is not recoverable if the recipient shows by a preponderance of the evidence that:

(a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

(b) the department had notice to and approved the stock dividend; and

(c) the insurer did not know and could not reasonably have known that the stock dividend distribution to the affiliate might adversely affect the solvency of the insurer.

(3) The maximum amount recoverable under this section is the amount needed to pay all claims under the receivership:

(a) in excess of all other available recoverable assets; and

(b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to any receiver under similar laws of other states.

(4) (a) A person who is an affiliate at the time value is received is liable up to the amount of value received by the affiliate.

(b) If two or more affiliates are liable regarding the same value received, they are jointly and severally liable.

(5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one year, all affiliates at the time the value is received are jointly and severally liable for any resulting deficiency in the amount that would have been recovered from the nonpaying affiliate.

(6) This section does not enlarge the personal liability of a director under existing law.

(7) An action or proceeding under this section may not be commenced after the earlier of:

(a) six years after the day on which a receiver is appointed; or

(b) the day on which the receivership is terminated.

Section 278. Section 31A-27a-701 is amended to read:

31A-27a-701. Priority of distribution.

(1) (a) The priority of payment of distributions on unsecured claims shall be in accordance with the order in which each class of claim is set forth in this section except as provided in Section 31A-27a-702.

(b) All claims in each class shall be paid in full or adequate funds retained for the claim's payment before a member of the next class receives payment.

(c) All claims within a class shall be paid substantially the same percentage.

(d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may not be established within a class.

(e) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.

(2) The order of distribution of claims shall be as follows:

(a) a Class 1 claim, which:

(i) is a cost or expense of administration expressly approved or ratified by the liquidator, including the following:

(A) the actual and necessary costs of preserving or recovering the property of the insurer;

(B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;

(C) a necessary filing fee;

(D) the fees and mileage payable to a witness;

(E) an unsecured loan obtained by the receiver, which:

(I) unless its terms otherwise provide, has priority over all other costs of administration; and

(II) absent agreement to the contrary, shares pro rata with all other claims described in this Subsection (2)(a)(i)(E); and

(F) an expense approved by the rehabilitator of the insurer, if any, incurred in the course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

(ii) except as expressly approved by the receiver, excludes any expense arising from a duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a Class 7 claim;

(b) a Class 2 claim, which:

(i) is a reasonable expense of a guaranty association, including overhead, salaries, or other general administrative expenses allocable to the receivership such as:

(A) an administrative or claims handling expense;

(B) an expense in connection with arrangements for ongoing coverage; and

(C) in the case of a property and casualty guaranty association, a loss adjustment expense, including:

(I) an adjusting or other expense; and

(II) a defense or cost containment expense; and

(ii) excludes an expense incurred in the performance of duties under Section 31A-28-112 or similar duties under the statute governing a similar organization in another state;

(c) a Class 3 claim, which:

(i) is:

(A) a claim under a policy of insurance including a third party claim;

(B) a claim under an annuity contract or funding agreement;

(C) a claim under a nonassessable policy for unearned premium;

(D) a claim of an obligee and, subject to the discretion of the receiver, a completion contractor under a surety bond or surety undertaking, except for:

(I) a bail bond;

(II) a mortgage guaranty;

(III) a financial guaranty; or

(IV) other form of insurance offering protection against investment risk or warranties;

(E) a claim by a principal under a surety bond or surety undertaking for wrongful dissipation of collateral by the insurer or its agents;

(F) an indemnity payment on:

(I) a covered claim;

(II) unearned premium; or

(III) a payment for the continuation of coverage made by an entity responsible for the payment of a claim or continuation of coverage of an insolvent health maintenance organization;

(G) a claim incurred during the extension of coverage provided for in Sections 31A-27a-402 and 31A-27a-403; or

(H) all other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including:

(I) an indemnity payment on covered claims; and

(II) in the case of a life and health guaranty association, a claim:

(Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities incurred on behalf of a covered claim or covered obligation of the insurer; and

(Bb) for the funds needed to reinsure the obligations described under this Subsection (2)(c)(i)(H)(II) with a solvent insurer; and

(ii) notwithstanding any other provision of this chapter, excludes the following which shall be paid under Class 7, except as provided in this section:

(A) an obligation of the insolvent insurer arising out of a reinsurance contract;

(B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant to a claims made policy after:

(I) the expiration date of the policy;

(II) the policy is replaced by the insured;

(III) the policy is canceled at the insured's request; or

(IV) the policy is canceled as provided in this chapter;

(C) an obligation to an insurer, insurance pool, or underwriting association and the insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is the named insured;

(D) an amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, which shall be paid as a claim in Class 9;

(E) a tort claim of any kind against the insurer;

(F) a claim against the insurer for bad faith or wrongful settlement practices; and

(G) a claim of a guaranty association for assessments not paid by the insurer, which claims shall be paid as claims in Class 7; and

(iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium claim on a policy, other than a reinsurance agreement;

(d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risk or warranties;

(e) a Class 5 claim, which is a claim of the federal government not included in Class 3 or 4;

(f) a Class 6 claim, which is a debt due an employee for services or benefits:

(i) to the extent that the expense:

(A) does not exceed the lesser of:

(I) $5,000; or

(II) two months' salary; and

(B) represents payment for services performed within one year before the day on which the initial order of receivership is issued; and

(ii) which priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees;

(g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1 through 6, including:

(i) a claim under a reinsurance contract;

(ii) a claim of a guaranty association for an assessment not paid by the insurer; and

(iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8 through 13;

(h) subject to Subsection (3), a Class 8 claim, which is:

(i) a claim of a state or local government, except a claim specifically classified elsewhere in this section; or

(ii) a claim for services rendered and expenses incurred in opposing a formal delinquency proceeding;

(i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures, unless expressly covered under the terms of a policy of insurance;

(j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;

(k) subject to Subsection (4), a Class 11 claim, which is:

(i) a surplus note;

(ii) a capital note;

(iii) a contribution note;

(iv) a similar obligation;

(v) a premium refund on an assessable policy; or

(vi) any other claim specifically assigned to this class;

(l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court; and

(m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or other owner arising out of:

(i) the shareholder's or owner's capacity as shareholder or owner or any other capacity; and

(ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

(3) To prove a claim described in Class 8, the claimant [~~must~~] shall show that:

(a) the insurer that is the subject of the delinquency proceeding incurred the fee or expense on the basis of the insurer's best knowledge, information, and belief:

(i) formed after reasonable inquiry indicating opposition is in the best interests of the insurer;

(ii) that is well grounded in fact; and

(iii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(b) opposition is not pursued for any improper purpose, such as to harass, to cause unnecessary delay, or to cause needless increase in the cost of the litigation.

(4) (a) A claim in Class 11 is subject to a subordination agreement related to other claims in Class 11 that exist before the entry of a liquidation order.

(b) A claim in Class 13 is subject to a subordination agreement, related to other claims in Class 13 that exist before the entry of a liquidation order.

Section 279. Section 31A-30-107.3 is amended to read:

31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.

(1) (a) A carrier that elects to discontinue offering a health benefit plan under Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e) is prohibited from writing new business:

(i) in the small employer and individual market in this state; and

(ii) for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(b) The prohibition described in Subsection (1)(a) may be waived if the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(2) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if enrollment is capped or suspended, an individual carrier:

(i) may elect to discontinue offering new individual health benefit plans, except to HIPAA eligibles, but [~~must~~] shall keep existing individual health benefit plans in effect, except those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2) or 31A-30-107.1(2);

(ii) may elect to continue to offer new individual and small employer health benefit plans; or

(iii) may elect to discontinue all of the covered carrier's health benefit plans in the individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e).

(b) A carrier that makes an election under Subsection (2)(a)(i):

(i) is prohibited from writing new business:

(A) in the individual market in this state; and

(B) for a period of five years beginning on the date of discontinuation;

(ii) may continue to write new business in the small employer market; and

(iii) [~~must~~] shall provide written notice of the election under Subsection (2)(a)(i) within two calendar days of the election to the Utah Insurance Department.

(c) The prohibition described in Subsection (2)(b)(i) may be waived if the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(d) A carrier that makes an election under Subsection (2)(a)(iii) is subject to the provisions of Subsection (1).

(3) If a carrier is doing business in one established geographic service area of the state, Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that geographic service area.

(4) If a small employer employs less than two eligible employees, a carrier may not discontinue or not renew the health benefit plan until the first renewal date following the beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that the employer no longer has at least two current employees.

Section 280. Section 31A-30-107.5 is amended to read:

31A-30-107.5. Preexisting condition exclusion -- Condition-specific exclusion riders -- Limitation periods.

(1) A health benefit plan may impose a preexisting condition exclusion only if the provision complies with Subsection 31A-22-605.1(4).

(2) (a) In accordance with Subsection (2)(b), an individual carrier:

(i) may, when the individual carrier and the insured mutually agree in writing to a condition-specific exclusion rider, offer to issue an individual policy that excludes all treatment and prescription drugs related to:

(A) a specific physical condition;

(B) a specific disease or disorder; and

(C) any specific or class of prescription drugs; and

(ii) may offer an individual policy that may establish separate cost sharing requirements including, deductibles and maximum limits that are specific to covered services and supplies, including drugs, when utilized for the treatment and care of the conditions, diseases, or disorders listed in Subsection (2)(b).

(b) (i) Except as provided in Section 31A-22-630 and Subsection (2)(b)(ii), the following may be the subject of a condition-specific exclusion rider:

(A) conditions, diseases, and disorders of the bones or joints of the ankle, arm, elbow, fingers, foot, hand, hip, knee, leg, mandible, mastoid, wrist, shoulder, spine, and toes, including bone spurs, bunions, carpal tunnel syndrome, club foot, cubital tunnel syndrome, hammertoe, syndactylism, and treatment and prosthetic devices related to amputation;

(B) anal fistula, anal fissure, anal stricture, breast implants, breast reduction, chronic cystitis, chronic prostatitis, cystocele, rectocele, enuresis, hemorrhoids, hydrocele, hypospadius, interstitial cystitis, kidney stones, uterine leiomyoma, varicocele, spermatocele, endometriosis;

(C) allergic rhinitis, nonallergic rhinitis, hay fever, dust allergies, pollen allergies, deviated nasal septum, and sinus related conditions, diseases, and disorders;

(D) hemangioma, keloids, scar revisions, and other skin related conditions, diseases, and disorders;

(E) goiter and other thyroid related conditions, diseases, or disorders;

(F) cataracts, cornea transplant, detached retina, glaucoma, keratoconus, macular degeneration, strabismus and other eye related conditions, diseases, and disorders;

(G) otitis media, cholesteatoma, otosclerosis, and other internal/external ear conditions, diseases, and disorders;

(H) Baker's cyst, ganglion cyst;

(I) abdominoplasty, esophageal reflux, hernia, Meniere's disease, migraines, TIC Doulourex, varicose veins, vestibular disorders;

(J) sleep disorders and speech disorders; and

(K) any specific or class of prescription drugs.

(ii) Subsection (2)(b)(i) does not apply:

(A) for the treatment of asthma; or

(B) when the condition is due to cancer.

(iii) A condition-specific exclusion rider:

(A) shall be limited to the excluded condition, disease, or disorder and any complications from that condition, disease, or disorder;

(B) may not extend to any secondary medical condition; and

(C) [~~must~~] shall include the following informed consent paragraph: "I agree by signing below, to the terms of this rider, which excludes coverage for all treatment, including medications, related to the specific condition(s), disease(s), and/or disorder(s) stated herein and that if treatment or medications are received that I have the responsibility for payment for those services and items. I further understand that this rider does not extend to any secondary medical condition, disease, or disorder."

(c) If an individual carrier issues a condition-specific exclusion rider, the condition-specific exclusion rider shall remain in effect for the duration of the policy at the individual carrier's option.

(d) An individual policy issued in accordance with this Subsection (2) is not subject to Subsection 31A-26-301.6(7).

(3) Notwithstanding the other provisions of this section, a health benefit plan may impose a limitation period if:

(a) each policy that imposes a limitation period under the health benefit plan specifies the physical condition, disease, or disorder that is excluded from coverage during the limitation period;

(b) the limitation period does not exceed 12 months;

(c) the limitation period is applied uniformly; and

(d) the limitation period is reduced in compliance with Subsections 31A-22-605.1(4)(a) and (4)(b).

Section 281. Section 31A-30-110 is amended to read:

31A-30-110. Individual enrollment cap.

(1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

(2) The commissioner shall raise the individual enrollment cap by .5% at the later of the following dates:

(a) six months from the last increase in the individual enrollment cap; or

(b) the date when CCI/TI is greater than .90, where:

(i) "CCI" is the total individual coverage count for all carriers certifying that their uninsurable percentage has reached the individual enrollment cap; and

(ii) "TI" is the total individual coverage count for all carriers.

(3) The commissioner may establish a minimum number of uninsurable individuals that a carrier entering the market who is subject to this chapter [~~must~~] shall accept under the individual enrollment provisions of this chapter.

(4) Beginning July 1, 1997, an individual carrier may decline to accept individuals applying for individual enrollment under Subsection 31A-30-108(3), other than individuals applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

(a) the uninsurable percentage for that carrier equals or exceeds the cap established in Subsection (1); and

(b) the covered carrier has certified on forms provided by the commissioner that its uninsurable percentage equals or exceeds the individual enrollment cap.

(5) The department may audit a carrier's records to verify whether the carrier's uninsurable classification meets industry standards for underwriting criteria as established by the commissioner in accordance with Subsection 31A-30-106(1)(i).

(6) (a) If the commissioner determines that individual enrollment is causing a substantial adverse effect on premiums, enrollment, or experience, the commissioner may suspend, limit, or delay further individual enrollment for up to 12 months.

(b) The commissioner shall adopt rules to establish a uniform methodology for calculating and reporting loss ratios for individual policies for determining whether the individual enrollment provisions of Section 31A-30-108 should be waived for an individual carrier experiencing significant and adverse financial impact as a result of complying with those provisions.

Section 282. Section 31A-30-206 is amended to read:

31A-30-206. Minimum participation and contribution levels -- Premium payments.

An insurer who offers a health benefit plan for which an employer has established a defined contribution arrangement under the provisions of this part:

(1) [~~shall not~~] may not:

(a) establish an employer minimum contribution level for the health benefit plan premium under Section 31A-30-112, or any other law; or

(b) discontinue or non-renew a policy under Subsection 31A-30-107(4) for failure to maintain a minimum employer contribution level;

(2) shall accept premium payments for an enrollee from multiple sources through the Internet portal, including:

(a) government assistance programs;

(b) contributions from a Section 125 Cafeteria plan, a health reimbursement arrangement, or other qualified mechanism for pre-tax payments established by any employer of the enrollee;

(c) contributions from a Section 125 Cafeteria plan, a health reimbursement arrangement, or other qualified mechanism for pre-tax payments established by an employer of a spouse or dependent of the enrollee; and

(d) contributions from private sources of premium assistance; and

(3) may require, as a condition of coverage, a minimum participation level for eligible employees of an employer, which for purposes of the defined contribution arrangement market may not exceed 75% participation.

Section 283. Section 31A-34-104 is amended to read:

31A-34-104. Alliance -- Required license.

(1) A person [~~must~~] shall be licensed as an alliance pursuant to this chapter to directly or indirectly make available or otherwise arrange for health insurance through multiple unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting, or coordinated marketing methodologies.

(2) (a) A person may not hold itself out as a health insurance purchasing alliance, purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or otherwise use a similar name unless licensed by the commissioner as an alliance.

(b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary health insurance purchasing association without being licensed by the commissioner as provided in Section 31A-34-105.

(3) To apply for licensure as an alliance, a person shall complete an application in a form designated by the commissioner and file it with the commissioner, together with the applicable filing fees determined by the commissioner under Section 63J-1-504.

Section 284. Section 31A-34-107 is amended to read:

31A-34-107. Directors, trustees, and officers.

(1) To ensure representation of consumer interests, at least 25% of the board [~~must~~] shall be enrollees, chosen under a plan proposed by the alliance and approved by the commissioner.

(2) Those who sit as directors or trustees on the board or as officers or principals of the corporation or trust [~~must~~] shall be trustworthy and collectively have the competence and experience to carry out the activities of the alliance.

Section 285. Section 31A-36-107 is amended to read:

31A-36-107. Examinations and retention of records.

(1) The commissioner may conduct an examination of a life settlement provider or life settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and 31A-2-205.

(2) A life settlement provider or life settlement producer shall retain for five years copies of:

(a) the following records, whether proposed, offered, or executed, from the later of the date of the proposal, offer, or execution:

(i) contracts;

(ii) purchase agreements;

(iii) underwriting documents;

(iv) policy forms; and

(v) applications;

(b) checks, drafts, and other evidence or documentation relating to the payment, transfer, or release of money, from the date of the transaction; and

(c) records and documents related to the requirements of this chapter.

(3) This section does not relieve a person of the obligation to produce a document described in Subsection (2) to the commissioner after the expiration of the relevant period if the person has retained the document.

(4) A record required by this section to be retained:

(a) [~~must~~] shall be legible and complete; and

(b) may be retained in any form or by any process that accurately reproduces or is a durable medium for the reproduction of the record.

(5) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This Subsection (5) does not automatically preclude an examiner from being:

(a) an owner;

(b) an insured in a settled policy; or

(c) a beneficiary in a policy that is proposed to be settled.

(6) (a) An examinee under this section shall reimburse the cost of an examination to the department consistent with Section 31A-2-205.

(b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not subject to Section 31A-2-205.

Section 286. Section 31A-36-109 is amended to read:

31A-36-109. General requirements.

(1) If a life settlement provider transfers ownership or changes the beneficiary of a settled policy, the life settlement provider shall inform the insured of the transfer or change within 20 calendar days.

(2) A life settlement provider that enters a life settlement shall first obtain:

(a) if the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter a life settlement;

(b) a witnessed document in which the owner represents that:

(i) the owner has a full and complete understanding of the life settlement and the benefits of the policy;

(ii) the owner has entered the life settlement freely and voluntarily; and

(iii) if applicable, the insured is terminally ill or chronically ill and that the illness was diagnosed after the policy was issued; and

(c) a document in which the insured consents to the release of the insured's medical records to:

(i) a life settlement provider;

(ii) a life settlement producer; and

(iii) the insurer that issued the policy covering the insured.

(3) Within 20 calendar days after an owner executes documents necessary to transfer rights under a policy, or enters into an agreement in any form, express or implied, to settle the policy, the life settlement provider shall give written notice to the issuer of the policy that the policy has or will become settled. The notice [~~must~~] shall be accompanied by a copy of the documents required by Subsection (4).

(4) The life settlement provider shall deliver a copy of the following to the insurer that issued the policy that is the subject of the life settlement:

(a) the medical release required under Subsection (2)(c);

(b) a copy of the owner's application for the life settlement; and

(c) the notice required under Subsection (3).

(5) (a) An insurer shall complete and return a request for verification of coverage not later than 30 calendar days after the day on which the request is received. In its response, the insurer shall indicate whether the insurer intends to pursue an investigation regarding the validity of the insurance contract.

(b) An insurer may not require that a person making a request under Subsection (5)(a) provide the insurer additional information in order for the insurer to comply with Subsection (5)(a), if the person provides the insurer:

(i) a request for verification of coverage made on an original, facsimile, or electronic copy of a verification of coverage for a policy document adopted by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) an authorization that accompanies the verification described in Subsection (5)(b)(i) signed by the owner.

(6) Medical information solicited or obtained by a life settlement provider or life settlement producer is subject to:

(a) other laws of this state relating to the confidentiality of the information; and

(b) a rule relating to privacy of medical or personal information promulgated by the commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. Sec. 6805.

(7) (a) (i) A life settlement entered into in this state [~~must~~] shall reserve to the owner an unconditional right to rescind the life settlement within the rescission period provided for in this Subsection (7).

(ii) The rescission period ends 15 calendar days after the day on which the owner receives the proceeds of the life settlement.

(iii) Rescission by an owner may be conditioned on the owner giving notice and repaying to the life settlement provider within the rescission period all proceeds of the life settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.

(b) If the insured dies during the rescission period, the life settlement is considered to be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement provider or life settlement purchaser are repaid within 60 calendar days of the day on which the insured dies.

(8) (a) Contact with an insured to determine the health status of the insured after a life settlement may be made only by a life settlement provider or life settlement producer that is licensed in this state, or its authorized representative, and no more than:

(i) once every three months if the insured has a life expectancy of one year or more; or

(ii) once every month if the insured has a life expectancy of less than one year.

(b) A life settlement provider or life settlement producer shall explain the procedure for the contacts allowed under this Subsection (8) to the owner when the application for the life settlement is signed by all participants in the life settlement.

(c) The limitations of this Subsection (8) do not apply to contacts for purposes other than determining health status.

(d) A life settlement provider or life settlement producer is responsible for the acts of its authorized representative in violation of this Subsection (8).

(9) The trustee of a related provider trust [~~must~~] shall agree in writing with the life settlement provider that:

(a) the life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(b) the trustee will make all records and files related to life settlements available to the

commissioner as if those records and files were maintained directly by the life settlement provider.

(10) Regardless of the method of compensation, a life settlement producer:

(a) represents only the owner; and

(b) owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

Section 287. Section 31A-36-110 is amended to read:

31A-36-110. Payment and document requirements.

(1) (a) A life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership or assignment or change of beneficiary of the affected policy to a designated independent escrow agent.

(b) Within three business days after the day on which the escrow agent receives the documents, or within three business days after the day on which the life settlement provider receives the documents if by mistake they are sent directly to the life settlement provider, the life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust account of the escrow agent in a federally insured depository institution.

(2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall deliver the original documents executed by the owner to:

(i) the life settlement provider; or

(ii) a related provider trust or other designated representative of the life settlement provider.

(b) Upon the life settlement provider's receipt from the insurer of an acknowledgment of the change in ownership or assignment or change of beneficiary of the affected policy, the life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement to the owner.

(3) Payment to the owner [~~must~~] shall be made within three business days after the day on which the life settlement provider receives the acknowledgment from the insurer. Failure to make the payment within that time makes the life settlement voidable by the owner for lack of consideration until payment is tendered to and accepted by the owner.

Section 288. Section 31A-36-112 is amended to read:

31A-36-112. Advertising regulations.

(1) (a) A life settlement provider or life settlement producer shall establish and continuously maintain a system of control over the content, form, and method of dissemination of advertisements of the life settlement provider's or life settlement producer's contracts and services.

(b) An advertisement is the responsibility of the life settlement provider or life settlement producer as well as the person that creates or presents the advertisement.

(c) A system of control [~~must~~] shall include at least annual notification to persons authorized by the life settlement provider or life settlement producer that disseminate advertisements of the requirements and procedures for approval before use of any advertisements not furnished by the life settlement provider or life settlement producer.

(2) An advertisement [~~must~~] shall be truthful and not misleading in fact or by implication, as determined by the commissioner from the overall impression it may reasonably be expected to create upon a person of average education or intelligence in the segment of the public to which it is directed.

(3) A false or misleading statement is not remedied by:

(a) making a life settlement available for inspection before it is consummated; or

(b) offering to refund payment if the owner is not satisfied within the period prescribed in Subsection 31A-36-109(7).

Section 289. Section 31A-36-114 is amended to read:

31A-36-114. Reporting of fraud and immunity.

(1) A person engaged in the business of life settlements that knows or reasonably suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) A person not engaged in the business of life settlements that knows or reasonably believes that a violation of Section 31A-36-113 is being, has been, or will be committed may furnish to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(3) Except as provided in Subsection (4), a person furnishing information of the kind described in this section is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner or the commissioner's employees, agents, or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(c) another person involved in the prevention or detection of violations of Section 31A-36-113 or that person's employees, agents, or representatives;

(d) the following organizations or their employees, agents, or representatives:

(i) the National Association of Insurance Commissioners;

(ii) the Financial Industry Regulatory Authority;

(iii) the North American Securities Administrators Association; or

(iv) another regulatory body overseeing life insurance, life settlements, securities, or investment fraud; or

(e) the insurer that issued the policy concerned in the information.

(4) The immunity provided in Subsection (3) does not extend to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a violation of this section, the plaintiff [~~must~~] shall plead specifically that the defendant acted with actual malice.

(5) A person furnishing information as identified in Subsection (3) is entitled to an award of attorney fees and costs if:

(a) the person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter; and

(b) the action did not have a reasonable basis in law or fact at the time it was initiated.

(6) This section does not supplant or modify any other privilege or immunity at common law or under another statute.

Section 290. Section 31A-37-105 is amended to read:

31A-37-105. Operation of a branch captive insurance company.

Except as otherwise provided in this chapter, a branch captive insurance company [~~must~~] shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner under Section 31A-37-106.

Section 291. Section 31A-37-106 is amended to read:

31A-37-106. Authority to make rules -- Authority to issue orders.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

(a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;

(b) require a statement, document, or information that a captive insurance company [~~must~~] shall provide to the commissioner to obtain a certificate of authority;

(c) determine a factor a captive insurance company shall provide evidence of under Subsection 31A-37-202(4)(c);

(d) prescribe one or more capital requirements for a captive insurance company in addition to those required under Section 31A-37-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;

(e) establish:

(i) the amount of capital or surplus required to be retained under Subsection 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance company; or

(ii) a formula to determine the amount described in Subsection 31A-37-205(4);

(f) waive or modify a requirement for public notice and hearing for the following by a captive insurance company:

(i) merger;

(ii) consolidation;

(iii) conversion;

(iv) mutualization; or

(v) redomestication;

(g) approve the use of one or more reliable methods of valuation and rating for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group;

(h) prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company;

(i) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;

(j) prescribe the required forms and reports under Section 31A-37-501; and

(k) establish one or more standards to ensure that:

(i) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by a pure captive insurance company:

(A) a parent; or

(B) an affiliated company of a parent; or

(ii) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by an industrial insured captive insurance company:

(A) an industrial insured; or

(B) an affiliated company of the industrial insured.

(2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules authorized under Subsection (1)(k), the commissioner may by temporary order grant authority to insure risks to:

(a) a pure captive insurance company; or

(b) an industrial insured captive insurance company.

(3) The commissioner may issue prohibitory, mandatory, and other orders relating to a captive

insurance company as necessary to enable the commissioner to secure compliance with this chapter.

Section 292. Section 31A-37-202 is amended to read:

31A-37-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure a risk other than a risk of:

(A) its parent or affiliate;

(B) a controlled unaffiliated business; or

(C) a combination of Subsections (1)(b)(i)(A) and (B);

(ii) an association captive insurance company may not insure a risk other than a risk of:

(A) an affiliate;

(B) a member organization of its association; and

(C) an affiliate of a member organization of its association;

(iii) an industrial insured captive insurance company may not insure a risk other than a risk of:

(A) an industrial insured that is part of the industrial insured group;

(B) an affiliate of an industrial insured that is part of the industrial insured group; and

(C) a controlled unaffiliated business of:

(I) an industrial insured that is part of the industrial insured group; or

(II) an affiliate of an industrial insured that is part of the industrial insured group;

(iv) a special purpose captive insurance company may only insure a risk of its parent;

(v) a captive insurance company may not provide:

(A) personal motor vehicle insurance coverage;

(B) homeowner's insurance coverage; or

(C) a component of a coverage described in this Subsection (1)(b)(v); and

(vi) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-37-303.

(c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:

(i) insurance;

(ii) reinsurance; or

(iii) both insurance and reinsurance.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

(i) a board of directors meeting; or

(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of:

(I) articles of incorporation or the charter of the corporation; and

(II) bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-37-106;

(ii) formed as a reciprocal shall:

(A) file with the commissioner:

(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

(II) a certified copy of the subscribers' agreement of the reciprocal;

(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and

(IV) any other statement or document required by the commissioner under Section 31A-37-106; and

(B) submit to the commissioner for approval a description of the:

(I) coverages;

(II) deductibles;

(III) coverage limits;

(IV) rates; and

(V) any other information the commissioner requires under Section 31A-37-106.

(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).

(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.

(iii) A reciprocal captive insurance company shall inform the commissioner of a material change in a rate within 30 days of the adoption of the change.

(c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:

(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;

(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;

(iii) the overall soundness of the plan of operation of the applicant captive insurance company;

(iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:

(A) a parent;

(B) a member organization; or

(C) an industrial insured; and

(v) any other factor the commissioner:

(A) adopts by rule under Section 31A-37-106; and

(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.

(d) In addition to the information required by Subsections (4)(a), (b), and (c), an applicant sponsored captive insurance company shall file with the commissioner:

(i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:

(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and

(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;

(ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company, including records pertaining to a protected cell, available for inspection or examination by the commissioner;

(iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and

(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.

(5) (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

(i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and

(ii) the laws of the state in which the public official serves require the information to be confidential.

(c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(6) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103 and 63J-1-504:

(i) a fee for examining, investigating, and processing, by a department employee, of an application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may:

(i) retain legal, financial, and examination services from outside the department to perform the services described in:

(A) Subsection (6)(a); and

(B) Section 31A-37-502; and

(ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.

(7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(8) A certificate of authority granted under this section expires annually and [~~must~~] shall be renewed by July 1 of each year.

Section 293. Section 31A-37-301 is amended to read:

31A-37-301. Incorporation.

(1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

(a) divided into shares; and

(b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:

(i) divided into shares; and

(ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;

(b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or

(c) organized as a reciprocal.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two [~~must~~] shall be residents of this state.

(4) (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (4)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(5) (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:

(i) the captive insurance company's articles of incorporation;

(ii) the certificate issued pursuant to Subsection (4); and

(iii) the fees required by the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (4) for a captive insurance company that complies with this section.

(6) (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (6)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(7) (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

(i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and

(ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.

(b) After the commissioner issues a certificate under Subsection (7)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.

(8) The capital stock of a captive insurance company incorporated as a stock insurer may not be issued at less than par value.

(9) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.

(10) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.

(11) (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.

(b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.

(c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

(12) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.

(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.

(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.

(d) In addition to the provisions of this Subsection (12), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.

(13) The articles of incorporation or bylaws of a captive insurance company may not authorize a quorum of a board of directors to consist of fewer than [~~1/3~~] one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.

Section 294. Section 31A-37-302 is amended to read:

31A-37-302. Investment requirements.

(1) (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.

(b) Notwithstanding Subsection (1)(a) and any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-37-106 for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group.

(2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

(b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:

(A) the parent company of the captive insurance company; or

(B) an affiliate of the captive insurance company.

(ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:

(A) the parent company of the pure captive insurance company; or

(B) an affiliate of the pure captive insurance company.

(b) A loan under Subsection (3)(a):

(i) may be made only on the prior written approval of the commissioner; and

(ii) [~~must~~] shall be evidenced by a note in a form approved by the commissioner.

(c) A pure captive insurance company may not make a loan from:

(i) the paid-in capital required under Subsection 31A-37-204(1); or

(ii) the free surplus required under Subsection 31A-37-205(1).

Section 295. Section 31A-37-306 is amended to read:

31A-37-306. Conversion or merger.

(1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:

(a) converted to a reciprocal insurer in accordance with a plan and this section; or

(b) merged with and into a reciprocal insurer in accordance with a plan and this section.

(2) A plan for a conversion or merger under this section:

(a) shall be fair and equitable to:

(i) the shareholders, in the case of a stock insurer; or

(ii) the policyholders, in the case of a mutual insurer; and

(b) shall provide for the purchase of:

(i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or

(ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.

(3) In the case of a conversion authorized under Subsection (1):

(a) the conversion [~~must~~] shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;

(b) the commissioner may not approve the plan of conversion under this section unless the plan:

(i) satisfies Subsections (2) and (6);

(ii) provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and

(iii) is approved:

(A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or

(B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

(c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);

(d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;

(e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(f) upon the effectiveness of the conversion:

(i) the corporate existence of the converting insurer shall cease; and

(ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.

(4) A merger authorized under Subsection (1) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:

(a) the plan or merger shall satisfy Subsection (2);

(b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;

(c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;

(e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);

(f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and

(g) an alien insurer may be a party to a merger authorized under Subsection (1) if:

(i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and

(ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.

(5) If the commissioner approves the articles of merger under this section:

(a) the commissioner shall endorse the commissioner's approval on the articles; and

(b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.

(6) (a) Except as provided in Subsection (6)(b), a conversion authorized under Subsection (1) [~~must~~] shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.

(b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the requirements for the hearing.

(c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (6)(a), the commissioner may cancel the hearing.

Section 296. Section 31A-37-402 is amended to read:

31A-37-402. Sponsored captive insurance companies -- Certificate of authority mandatory.

(1) A sponsor of a sponsored captive insurance company shall be:

(a) an insurer authorized or approved under the laws of a state;

(b) a reinsurer authorized or approved under the laws of a state;

(c) a captive insurance company holding a certificate of authority under this chapter;

(d) an insurance holding company that:

(i) controls an insurer licensed pursuant to the laws of a state; and

(ii) is subject to registration pursuant to the holding company system of laws of the state of domicile of the insurer described in Subsection (1)(d)(i); or

(e) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.

(2) (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be fronted by an insurer that is:

(i) authorized or approved:

(A) under the laws of a state; or

(B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;

(ii) reinsured by a reinsurer authorized or approved by this state; or

(iii) subject to Subsection (2)(b), secured by a trust fund:

(A) in the United States;

(B) for the benefit of policyholders and claimants; and

(C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner.

(b) (i) The amount of security provided by the trust fund described in Subsection (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but unreported losses; and

(D) unearned premiums for business written through the participant's protected cell.

(ii) The commissioner may require the sponsored captive insurance company to increase the funding of a trust established pursuant to this Subsection (2).

(iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of credit, the letter of credit [~~must~~] shall be established, issued, or confirmed by a bank that is:

(A) chartered in this state;

(B) a member of the federal reserve system; or

(C) chartered by another state if that state-chartered bank is acceptable to the commissioner.

(iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.

(3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section 297. Section 31A-37-601 is amended to read:

31A-37-601. Incorporation of a captive reinsurance company.

(1) A captive reinsurance company shall be incorporated as a stock insurer with its capital:

(a) divided into shares; and

(b) held by the captive reinsurance company's shareholders.

(2) (a) A captive reinsurance company may not have fewer than three incorporators.

(b) At least two of the incorporators of a captive reinsurance company [~~must~~] shall be residents of this state.

(3) (a) Before the articles of incorporation are filed with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate of finding that the establishment and maintenance of the proposed corporation promotes the general good of this state.

(b) In considering a request for a certificate under Subsection (3)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) other factors the commissioner considers advisable.

(4) The capital stock of a captive reinsurance company [~~must~~] shall be issued at par value or greater.

(5) At least one of the members of the board of directors of a captive reinsurance company incorporated in this state [~~must~~] shall be a resident of this state.

Section 298. Section 31A-37a-205 is amended to read:

31A-37a-205. Sponsored captives.

In addition to the other provisions of this chapter, this section applies to a sponsored captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a certificate of authority as a special purpose financial captive insurance company pursuant to this chapter.

(1) A sponsored captive insurance company may have a certificate of authority as a special purpose financial captive insurance company under this chapter.

(2) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, "general account" means the assets and liabilities of the sponsored captive insurance company not attributable to a protected cell.

(b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, the definition of "insolvency" and "insolvent" in Section 31A-37a-102 shall be applied separately to:

(i) each protected cell; and

(ii) the special purpose financial captive insurance company's general account.

(3) (a) A participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company [~~must~~] shall be a ceding insurer, unless approved by the commissioner before a person becomes a participant.

(b) A change in a participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to prior approval by the commissioner.

(4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance company that is a sponsored captive insurance company may issue a security to a person not described in Section 31A-37-401 if the issuance to that person is approved by the commissioner before the issuance of the security.

(5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall:

(a) at the time of initial application for a certificate of authority as a special purpose financial captive insurance company, possess unimpaired paid-in capital and surplus of not less than $500,000; and

(b) maintain at least $500,000 of unimpaired paid-in capital and surplus of not less than $500,000 during the time that it holds a certificate of authority under this chapter.

(6) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, this Subsection (6) applies to:

(i) a security issued by the special purpose financial captive insurance company with respect to a protected cell; or

(ii) a contract or obligation of the special purpose financial captive insurance company with respect to a protected cell.

(b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall include with a security, contract, or obligation described in Subsection (6)(a):

(i) the designation of the protected cell; and

(ii) a disclosure in a form and content satisfactory to the commissioner to the effect that the holder of the security or a counterparty to the contract or obligation has no right or recourse against the special purpose financial captive insurance company and its assets other than against an asset properly attributable to the protected cell.

(c) Notwithstanding the requirements of this Subsection (6) and subject to other statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a creditor, ceding insurer, or another person may not use a failure to include a disclosure described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

(i) the general account of the special purpose financial captive insurance company; or

(ii) the assets of another protected cell of the special financial captive insurance company.

(7) In addition to Section 31A-37-401, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to the following with respect to a protected cell:

(a) (i) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a protected cell only for the purpose of insuring or

reinsuring risks of one or more reinsurance contracts with a ceding insurer with the intent of facilitating an insurance securitization.

(ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

(iii) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to each reinsurance contract that is funded in whole or in part by a separate insurance securitization transaction.

(b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not sale, exchange, or transfer an asset by, between, or among any of its protected cells without the prior approval of the commissioner.

(8) (a) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute an asset or liability to a protected cell and to the general account in accordance with the plan of operation approved by the commissioner.

(b) Except as provided by Subsection (8)(a), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not attribute an asset or liability between:

(i) its general account and a protected cell; or

(ii) its protected cells.

(c) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute:

(i) an insurance obligation, asset, or liability relating to a reinsurance contract entered into with respect to a protected cell; and

(ii) an insurance securitization transaction related to the obligation, asset, or liability described in Subsection (8)(c)(i), including a security issued by the special purpose financial captive insurance company as part of the insurance securitization, to the protected cell.

(d) The following shall reflect an insurance obligation, asset, or liability relating to a reinsurance contract and the insurance securitization transaction that are attributed to a protected cell:

(i) a right, benefit, obligation, or a liability of a security attributable to a protected cell described in Subsection (8)(c);

(ii) the performance under a reinsurance contract and the related insurance securitization transaction; and

(iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation agreement to which the special purpose financial captive insurance company is a party, including a payment made by or due to be made to the special purpose financial captive insurance company pursuant to the terms of the tax allocation agreement.

(9) In addition to Section 31A-37a-502:

(a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company.

(b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with respect to:

(i) another protected cell of the special purpose financial captive insurance company; or

(ii) the special purpose financial captive insurance company's general account.

(c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose financial captive insurance company shall ensure that the assets attributable to one protected cell are not applied to the liabilities attributable to:

(A) another protected cell; or

(B) the special purpose financial captive insurance company's general account.

(ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more than one protected cell, the receiver shall deal with the asset or liability in accordance with the terms of a relevant governing instrument or contract.

(d) The insolvency of a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for the commissioner to prohibit:

(i) a payment by the special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or reinsurance contract with respect to another protected cell; or

(ii) an action required to make a payment described in Subsection (9)(d)(i).

Section 299. Section 32B-1-407 (Effective 07/01/11) is amended to read:

32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable licensees.

(1) Notwithstanding any other provision of this part, an applicable licensee shall require that an authorized person under the applicable licensee verify proof of age as provided in this section.

(2) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

(a) gains admittance to the premises of a social club licensee; or

(b) procures an alcoholic product on the premises of a dining club licensee.

(3) To comply with Subsection (2), an authorized person shall:

(a) request the individual present proof of age; and

(b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (4); or

(ii) if the proof of age cannot be electronically verified as provided in Subsection (3)(b)(i), request that the individual comply with a process established by the commission by rule.

(4) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described in Subsection (1) no more than the following for the individual who presents the proof of age:

(i) the name;

(ii) the age;

(iii) the number assigned to the individual's proof of age by the issuing authority;

(iv) the birth date;

(v) the gender; and

(vi) the status and expiration date of the individual's proof of age; and

(b) the security measures that [~~must~~] shall be used by an applicable licensee to ensure that information obtained under this section is:

(i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and

(ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(5) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

Section 300. Section 32B-1-505 (Effective 07/01/11) is amended to read:

32B-1-505 (Effective 07/01/11). Sexually oriented entertainer.

(1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a person to:

(a) appear or perform in a state of nudity;

(b) perform or simulate an act of:

(i) sexual intercourse;

(ii) masturbation;

(iii) sodomy;

(iv) bestiality;

(v) oral copulation;

(vi) flagellation; or

(vii) a sexual act that is prohibited by Utah law; or

(c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

(3) A sexually oriented entertainer may perform in a state of seminudity:

(a) only in:

(i) a tavern; or

(ii) a social club license premises; and

(b) only if:

(i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and

(ii) the outside entrance doors of the premises remain unlocked.

(4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:

(a) approved by the commission in accordance with rules made by the commission;

(b) configured so as to preclude a patron from:

(i) touching the sexually oriented entertainer; or

(ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and

(c) configured so as to preclude the sexually oriented entertainer from touching a patron.

(5) A sexually oriented entertainer may not touch a patron:

(a) during the sexually oriented entertainer's performance; or

(b) while the sexually oriented entertainer is dressed in performance attire.

(6) A sexually oriented entertainer, while in the portion of the premises used by patrons, [~~must~~] shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.

(7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.

(8) A patron may not:

(a) touch a sexually oriented entertainer:

(i) during the sexually oriented entertainer's performance; or

(ii) while the sexually oriented entertainer is dressed in performance attire; or

(b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.

(9) A minor may not be on premises described in Subsection (3).

(10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or social club licensee:

(a) may not appear or perform in a state of nudity or a state of seminudity; and

(b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:

(i) is not less than the following at its widest point:

(A) four inches coverage width in the front of the human body; and

(B) five inches coverage width in the back of the human body;

(ii) does not taper to less than one inch wide at the narrowest point; and

(iii) if covering a female, completely covers the breast below the top of the areola.

Section 301. Section 32B-6-407 (Effective 07/01/11) is amended to read:

32B-6-407 (Effective 07/01/11). Specific operational requirements for equity club license or fraternal club license.

(1) For purposes of this section only:

(a) "Club licensee" means an equity club licensee or fraternal club licensee.

(b) "Club licensee" does not include a dining club licensee or social club licensee.

(2) (a) A club licensee shall have a governing body that:

(i) consists of three or more members of the club; and

(ii) holds regular meetings to:

(A) review membership applications; and

(B) conduct other business as required by the bylaws or house rules of the club.

(b) (i) A club licensee shall maintain a minute book that is posted currently by the club licensee.

(ii) The minute book required by this Subsection (2) shall contain the minutes of a regular or special meeting of the governing body.

(3) A club licensee may admit an individual as a member only on written application signed by the person, subject to:

(a) the person paying an application fee; and

(b) investigation, vote, and approval of a quorum of the governing body.

(4) A club licensee shall:

(a) record an admission of a member in the official minutes of a regular meeting of the governing body; and

(b) whether approved or disapproved, file an application as a part of the official records of the club licensee.

(5) The spouse of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(6) A minor child of a member of a club licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the club licensee; and

(b) except to the extent restricted by this title.

(7) A club licensee shall maintain:

(a) a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member;

(b) a membership list; and

(c) a current record indicating when a member is removed as a member or resigns.

(8) (a) A club licensee shall have bylaws or house rules that include provisions respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the club;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for removing a member from the club membership for the nonpayment of dues or other cause;

(v) provisions for guests; and

(vi) application fees and membership dues.

(b) A club licensee shall maintain a current copy of the club licensee's current bylaws and current house rules.

(c) A club licensee shall maintain its bylaws or house rules, and any amendments to those records, on file with the department at all times.

(9) A club licensee may, in its discretion, allow an individual to be admitted to or use the club licensed premises as a guest subject to the following conditions:

(a) the individual is allowed to use the club licensee premises only to the extent permitted by the club licensee's bylaws or house rules;

(b) the individual [~~must~~] shall be previously authorized by a member of the club who agrees to host the individual as a guest into the club;

(c) the individual has only those privileges derived from the individual's host for the duration of the individual's visit to the club licensee premises; and

(d) a club licensee or staff of the club licensee may not enter into an agreement or arrangement with a club member to indiscriminately host a member of the general public into the club licensee premises as a guest.

(10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club licensed premises without a host if:

(a) (i) the club licensee is an equity club licensee; and

(ii) the individual is a member of an equity club licensee that has reciprocal guest privileges with the equity club licensee for which the individual is a guest; or

(b) (i) the club licensee is a fraternal club licensee; and

(ii) the individual is a member of the same fraternal organization as the fraternal club licensee for which the individual is a guest.

(11) Unless the patron is a member or guest, a club licensee may not:

(a) sell, offer for sale, or furnish an alcoholic product to the patron; or

(b) allow the patron to be admitted to or use the licensed premises.

(12) A minor may not be a member, officer, director, or trustee of a club licensee.

(13) Public advertising related to a club licensee by the following shall clearly identify a club as being "a club for members":

(a) the club licensee;

(b) staff of the club licensee; or

(c) a person under a contract or agreement with the club licensee.

Section 302. Section 32B-8-304 (Effective 07/01/11) is amended to read:

32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa sublicense.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a resort spa sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a retail licensee;

(ii) staff of the retail licensee;

(iii) a person otherwise related to a resort spa sublicense; or

(iv) any combination of the persons listed in this Subsection (1)(b).

(2) A person operating under a resort spa sublicense shall display in a prominent place in the resort spa a list of the types and brand names of liquor being furnished through its calibrated metered dispensing system.

(3) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a record required by this title is maintained, and a record is maintained or used for the resort spa sublicense:

(i) as the department requires; and

(ii) for a minimum period of three years.

(b) A record is subject to inspection by an authorized representative of the commission and the department.

(c) A resort licensee shall allow the department, through an auditor or examiner of the department, to audit the records for a resort spa sublicense at the times the department considers advisable.

(d) The department shall audit the records for a resort spa sublicense at least once annually.

(e) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(4) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or furnish liquor at a resort spa during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a resort spa shall remain open for one hour after the resort spa ceases the sale and furnishing of an alcoholic product during which time a person at the resort spa may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A resort spa is not required to remain open:

(A) after all persons have vacated the resort spa sublicense premises; or

(B) during an emergency.

(d) A person operating under a resort spa sublicense may not allow a person to remain on the resort spa sublicense premises to consume an alcoholic product on the resort spa sublicense premises during a period that:

(i) begins at 2 a.m.; and

(ii) ends at 9:59 a.m.

(5) A minor may not be admitted into, use, or be on:

(a) the sublicense premises of a resort spa unless accompanied by a person 21 years of age or older; or

(b) a lounge or bar area of the resort spa sublicense premises.

(6) A resort spa shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the resort spa sublicense premises.

(7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A resort spa patron may not have two spirituous liquor drinks before the resort spa patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under this Subsection (7).

(8) (a) An alcoholic product may only be consumed at a table or counter.

(b) An alcoholic product may not be served to or consumed by a patron at a bar.

(9) (a) A person operating under a resort spa sublicense shall have available on the resort spa sublicense premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold or furnished by the resort spa including:

(i) a set-up charge;

(ii) a service charge; or

(iii) a chilling fee.

(b) A charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic product menus including:

(i) a set-up charge;

(ii) a service charge; or

(iii) a chilling fee.

(10) (a) A resort licensee shall own or lease premises suitable for the resort spa's activities.

(b) A resort licensee may not maintain premises in a manner that barricades or conceals the resort spa sublicense's operation.

(11) Subject to the other provisions of this section, a person operating under a resort spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use the resort spa sublicense premises other than:

(a) a resident;

(b) a public customer who holds a valid customer card issued under Subsection (13); or

(c) an invitee.

(12) A person operating under a resort spa sublicense may allow an individual to be admitted to or use the resort spa sublicense premises as an invitee subject to the following conditions:

(a) the individual [~~must~~] shall be previously authorized by one of the following who agrees to host the individual as an invitee into the resort spa:

(i) a resident; or

(ii) a public customer as described in Subsection (11);

(b) the individual has only those privileges derived from the individual's host for the duration of the invitee's visit to the resort spa; and

(c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter into an agreement or arrangement with a resident or public customer to indiscriminately host a member of the general public into the resort spa as an invitee.

(13) A person operating under a resort spa sublicense may issue a customer card to allow an individual to enter and use the resort spa sublicense premises on a temporary basis under the following conditions:

(a) the resort spa may not issue a customer card for a time period that exceeds three weeks;

(b) the resort spa shall assess a fee to a public customer for a customer card;

(c) the resort spa may not issue a customer card to a minor; and

(d) a public customer may not host more than seven invitees at one time.

Section 303. Section 34-19-1 is amended to read:

34-19-1. Declaration of policy.

In the interpretation and application of this chapter, the public policy of this state is declared as follows:

(1) It [~~shall not be~~] is not unlawful for employees to organize themselves into or carry on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the conditions of members, or carrying out the legitimate purposes of such organizations as freely as they could do if acting singly.

(2) The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate object thereof; nor shall such organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

(3) Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect [~~his~~] the individual unorganized worker's freedom of labor and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual employee have full freedom of association, self-organization, and designation of representatives of [~~his~~] the individual employee's own choosing to negotiate the terms and conditions of [~~his~~] the individual employee's employment, and that [~~he~~] the individual employee shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or their mutual aid or protection.

Section 304. Section 34-19-9 is amended to read:

34-19-9. Injunctive relief -- Contempt -- Rights of accused.

In all cases where a person shall be charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court, or judge or judges of it, the accused shall enjoy:

(1) the rights as to admission to bail that are accorded to persons accused of crime;

(2) the right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view of or in the presence of the court;

(3) upon demand, the right to a speedy and public trial by an impartial jury of the judicial district in which the contempt shall have been committed. This requirement [~~shall not~~] may not be construed to apply to contempts committed in the presence of the court or so near to it as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court; and

(4) the right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall proceed no further, but another judge shall be designated by the presiding judge of the court. The demand shall be filed prior to the hearing in the contempt proceeding.

Section 305. Section 34-19-10 is amended to read:

34-19-10. Injunctive relief -- Contempt -- Penalty.

Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding $100, or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail for the nonpayment of such a fine, [~~he must~~] the person shall be discharged at the expiration of 15 days; but [~~where he~~] if the person is also committed for a definite time, the 15 days [~~must~~] shall be computed from the expiration of the definite time.

Section 306. Section 34-19-13 is amended to read:

34-19-13. Agreements against public policy.

[~~Every undertaking or promise~~] Each of the following undertakings or promises hereafter made, whether written or oral, express or implied, between any employee or prospective employee and [~~his~~] the employee's or prospective employee's employer, prospective employer, or any other individual, firm, company, association, or corporation, [~~whereby:~~] is contrary to public policy and may not be a basis for the granting of legal or equitable relief by any court against a party to the undertaking or promise, or against any other person who may advise, urge, or induce, without fraud, violence or threat of violence, either party to act in disregard of the undertaking or promise:

(1) [~~either party thereto undertakes or promises~~] an undertaking or promise by either party to join or to remain a member of some specific labor organization or organizations or to join or remain a member of some specific employer organization or any employer organization or organizations; [~~and/or~~]

(2) [~~either party thereto undertakes or promises not to~~] an undertaking or promise by either party to not join or not [~~to~~] remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations; [~~and/or~~] or

(3) [~~either party thereto undertakes or promises that he will~~] an undertaking or promise by either party to withdraw from an employment relation in

the event that [~~he~~] the party joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations[~~; is hereby declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence or threat thereof, either party thereto to act in disregard of such undertaking or promise~~].

Section 307. Section 34-20-3 is amended to read:

34-20-3. Labor relations board.

(1) (a) There is created the Labor Relations Board consisting of the following:

(i) the commissioner of the Labor Commission;

(ii) two members appointed by the governor with the consent of the Senate consisting of:

(A) a representative of employers, in making this appointment the governor shall consider nominations from employer organizations; and

(B) a representative of employees, in making this appointment the governor shall consider nominations from employee organizations.

(b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every two years.

(c) The commissioner shall serve as chair of the board.

(d) A vacancy occurring on the board for any cause of the members appointed under Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.

(e) The governor may at any time remove a member appointed under Subsection (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.

(g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(2) A meeting of the board may be called:

(a) by the chair; or

(b) jointly by the members appointed under Subsection (1)(a)(ii).

(3) The chair may provide staff and administrative support as necessary from the Labor Commission.

(4) A vacancy in the board [~~shall not~~] does not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum.

(5) The board shall have an official seal which shall be judicially noticed.

Section 308. Section 34-20-5 is amended to read:

34-20-5. Labor relations board -- Offices -- Jurisdiction -- Member's participation in case.

The principal office of the board shall be at the state capitol, but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by [~~such~~] the agents or agencies [~~as~~] it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member who participates in [~~such~~] the inquiry [~~shall not~~] may not be disqualified from subsequently participating in a decision of the board in the same case.

Section 309. Section 34-20-8 is amended to read:

34-20-8. Unfair labor practices.

(1) It shall be an unfair labor practice for an employer, individually or in concert with others:

(a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer [~~shall not be~~] is not prohibited from permitting employees to confer with [~~him~~] the employer during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment or any term of condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor

organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.

(d) To refuse to bargain collectively with the representative of a majority of [~~his~~] the employer's employees in any collective bargaining unit; provided, that, when two or more labor organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of [~~such~~] the proceedings the employer [~~shall not~~] may not be [~~deemed~~] considered to have refused to bargain.

(e) To bargain collectively with the representatives of less than a majority of [~~his~~] the employer's employees in a collective bargaining unit.

(f) To discharge or otherwise discriminate against an employee because [~~he~~] the employee has filed charges or given testimony under this [~~act~~] chapter.

(2) It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of [~~his~~] the employee's legal rights, including those guaranteed in Section 34-20-7, or to intimidate [~~his~~] the employee's family, picket [~~his~~] the employee's domicile, or injure the person or property of [~~such~~] the employee or [~~his~~] the employee's family.

(b) To coerce, intimidate or induce an employer to interfere with any of [~~his~~] the employer's employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to engage in any practice with regard to [~~his~~] the employer's employees which would constitute an unfair labor practice if undertaken by [~~him on his~~] the employer on the employer's own initiative.

(c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(f) To take unauthorized possession of property of the employer.

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by Subsections (1) and (2) of this section.

Section 310. Section 34-23-208 is amended to read:

34-23-208. Exceptions.

The provisions of this chapter [~~shall not~~] do not apply to a person who is 16 years of age or older and for whom employment would not endanger [~~his~~] the person's health and safety if that person:

(1) has received a high school diploma;

(2) has received a school release certificate;

(3) is legally married; or

(4) is head of a household.

Section 311. Section 34-25-2 is amended to read:

34-25-2. "Fellow servant" defined.

All persons who are engaged in the service of any employer and who while so engaged are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being entrusted by such employer with any superintendence or control over [~~his~~] the person's fellow employees, are fellow servants with each other; but nothing herein contained shall be so construed as to make the employees of such employer fellow servants with other employees engaged in any other department of service of such employer. Employees who do not come within the provisions of this section [~~shall not~~] may not be considered fellow servants.

Section 312. Section 34-28-5 is amended to read:

34-28-5. Separation from payroll -- Resignation -- Cessation because of industrial dispute.

(1) (a) Whenever an employer separates an employee from the employer's payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.

(b) (i) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand until paid, but in no event to exceed 60 days, at the same rate that the employee received at the time of separation.

(ii) The employee may recover the penalty thus accruing to the employee in a civil action. This action [~~must~~] shall be commenced within 60 days from the date of separation.

(iii) An employee who has not made a written demand for payment is not entitled to any penalty under Subsection (1)(b).

(2) If an employee does not have a written contract for a definite period and resigns the employee's employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday.

(3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of this cessation become due and payable at the next regular payday, as provided in Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of the industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.

(4) This section does not apply to the earnings of a sales agent employed on a commission basis who has custody of accounts, money, or goods of the sales agent's principal if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

Section 313. Section 34-28-6 is amended to read:

34-28-6. Dispute over wages -- Notice and payment.

(1) In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages [~~which he~~] that the employer concedes to be due and shall pay such amount without condition within the time set by this chapter[~~; but acceptance by the employee of any such payment made shall not~~].

(2) Acceptance by an employee of a payment described in Subsection (1) does not constitute a release as to the balance of [~~his~~] the employee's claim.

Section 314. Section 34-28-14 is amended to read:

34-28-14. Actions by division as assignee -- Costs need not be advanced.

(1) In all actions brought by the division as assignee under Section 34-28-13, no court costs of any nature shall be required to be advanced nor shall any bond or other security be required from the division in connection with the same.

(2) Any sheriff, constable, or other officer requested by the division to serve summons, writs, complaints, orders, including any garnishment papers, and all necessary and legal papers within his jurisdiction shall do so without requiring the division to advance the fees or furnish any security or bond.

(3) Whenever the division shall require the sheriff, constable, or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, this officer shall do so without requiring the division to furnish any security or bond in the action.

(4) The officer in carrying out the provisions of this Subsection (4) [~~shall not be~~] is not responsible in damages for any wrongful seizure made in good faith.

(5) Whenever anyone other than the defendant claims the right of possession or ownership to such seized property, then in such case the officer may permit such claimant to have the custody of such property pending a determination of the court as to who has right of possession or ownership of such property.

(6) Any garnishee defendant shall be required to appear and make answer in any such action, as required by law, without having paid to [~~him~~] the garnishee defendant in advance witness fees, but such witness fees shall be included as part of the taxable costs of such action. Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or constable's fees; and fourth, the court costs.

Section 315. Section 34-29-1 is amended to read:

34-29-1. License required -- Agencies for teachers excepted.

It shall be unlawful for any person to open and establish in any city or town, or elsewhere within the limits of this state, any intelligence or employment office for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work, without first having obtained a license so to do from the city, town, or, if not within any city or town, from the county where such intelligence or employment office is to be opened or such business is to be carried on. Any person performing any of these services shall be deemed to be an employment agent within the meaning of this chapter, but the provisions of Section 34-29-10 [~~shall not~~] do not apply to any person operating agencies for schoolteachers; but it shall be a misdemeanor for any schoolteachers' employment agency to receive as commission for information or assistance such as is described herein any consideration in value in excess of 5% of the amount of the first year's salary of the person to whom such information is furnished.

Section 316. Section 34-32-4 is amended to read:

34-32-4. Exceptions from chapter.

(1) The provisions of this chapter [~~shall not~~] do not apply to carriers as that term is defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934. 48 Stat. 1189, U.S. Code, Title 45, Section 151.

(2) Nothing in this chapter is intended to, or may be construed to, preempt any requirement of federal law.

Section 317. Section 34-34-2 is amended to read:

34-34-2. Public policy.

It is hereby declared to be the public policy of the state [~~of Utah~~] that the right of persons to work, whether in private employment or for the state, its counties, cities, school districts, or other political subdivisions, [~~shall not~~] may not be denied or abridged on account of membership or nonmembership in any labor union, labor organization or any other type of association; and further, that the right to live includes the right to work. The exercise of the right to work [~~must~~] shall be protected and maintained free from undue restraints and coercion.

Section 318. Section 34-34-15 is amended to read:

34-34-15. Existing contracts -- Chapter applicable upon renewal or extension.

The provisions of this chapter [~~shall not~~] do not apply to any lawful contract in force on the effective date of this act, but they shall apply in all respects to contracts entered into after such date and to any renewal or extension of any existing contract.

Section 319. Section 34-36-3 is amended to read:

34-36-3. Carriers and vehicles of United States exempt.

This chapter [~~shall not~~] does not apply to motor carriers or to motor vehicles owned and operated by the United States.

Section 320. Section 34-41-106 is amended to read:

34-41-106. Employee not disabled.

An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter [~~shall not~~] may not, by virtue of those results alone, be defined as disabled for purposes of:

(1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or

(2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

Section 321. Section 34A-1-408 is amended to read:

34A-1-408. Investigations through representatives.

(1) For the purpose of making any investigation necessary for the implementation of this title with regard to any employment or place of employment, the commission may appoint, in writing, any competent person who is a resident of the state, as an agent, whose duties shall be prescribed in the written appointment.

(2) In the discharge of the agent's duties, the agent shall have:

(a) every power of investigation granted in this title to the commission; and

(b) the same powers as a referee appointed by a district court with regard to taking evidence.

(3) The commission may:

(a) conduct any number of the investigations contemporaneously through different agents; and

(b) delegate to the agents the taking of evidence bearing upon any investigation or hearing.

(4) The recommendations made by the agents shall be advisory only and [~~shall not~~] do not preclude the taking of further evidence or further investigation if the commission so orders.

Section 322. Section 34A-1-409 is amended to read:

34A-1-409. Partial invalidity -- Saving clause.

Should any section or provision of this title be decided by the courts to be unconstitutional or invalid the same [~~shall not~~] does not affect the validity of the title as a whole or any part of the title other than the part so decided to be unconstitutional.

Section 323. Section 34A-2-413 is amended to read:

34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.

(1) (a) In the case of a permanent total disability resulting from an industrial accident or occupational disease, the employee shall receive compensation as outlined in this section.

(b) To establish entitlement to permanent total disability compensation, the employee [~~must~~] shall prove by a preponderance of evidence that:

(i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;

(ii) the employee is permanently totally disabled; and

(iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.

(c) To establish that an employee is permanently totally disabled the employee [~~must~~] shall prove by a preponderance of the evidence that:

(i) the employee is not gainfully employed;

(ii) the employee has an impairment or combination of impairments that limit the employee's ability to do basic work activities;

(iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and

(iv) the employee cannot perform other work reasonably available, taking into consideration the employee's:

(A) age;

(B) education;

(C) past work experience;

(D) medical capacity; and

(E) residual functional capacity.

(d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

(i) may be presented to the commission;

(ii) is not binding; and

(iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.

(e) In determining under Subsections (1)(b) and (c) whether an employee cannot perform other work reasonably available, the following may not be considered:

(i) whether the employee is incarcerated in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) whether the employee is not legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

(2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the injury, limited as follows:

(a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;

(b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of $45 per week and:

(A) $5 for a dependent spouse; and

(B) $5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and

(ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

(A) the maximum established in Subsection (2)(a); or

(B) the average weekly wage of the employee at the time of the injury; and

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.

(3) This Subsection (3) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994.

(a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The Employers' Reinsurance Fund shall for an overpayment of compensation described in Subsection (3)(b), reimburse the overpayment:

(i) to the employer or its insurance carrier; and

(ii) out of the Employers' Reinsurance Fund's liability to the employee.

(d) After an employee receives compensation from the employee's employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

(e) Employers' Reinsurance Fund payments shall commence immediately after the employer or its insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.

(4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.

(a) The employer or its insurance carrier is liable for permanent total disability compensation.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The employer or its insurance carrier may recoup the overpayment of compensation described

in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(5) (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:

(i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

(ii) the employer or its insurance carrier submits to the administrative law judge:

(A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment; or

(B) notice that the employer or its insurance carrier will not submit a plan; and

(iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to:

(A) consider evidence regarding rehabilitation; and

(B) review any reemployment plan submitted by the employer or its insurance carrier under Subsection (5)(a)(ii).

(b) Before commencing the procedure required by Subsection (5)(a), the administrative law judge shall order:

(i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and

(ii) the payment of any undisputed disability or medical benefits due the employee.

(c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

(d) The employer or its insurance carrier shall be given credit for any disability payments made under Subsection (5)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.

(e) An employer or its insurance carrier may not be ordered to submit a reemployment plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to Subsections (5)(e)(i) through (iii).

(i) The plan may include, but not require an employee to pay for:

(A) retraining;

(B) education;

(C) medical and disability compensation benefits;

(D) job placement services; or

(E) incentives calculated to facilitate reemployment.

(ii) The plan shall include payment of reasonable disability compensation to provide for the employee's subsistence during the rehabilitation process.

(iii) The employer or its insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan is cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.

(f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.

(g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an employee could immediately or without unreasonable delay return to work but for the following, an administrative law judge shall order that the employee be denied the payment of weekly permanent total disability compensation benefits:

(i) incarceration in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) not being legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

(6) (a) The period of benefits commences on the date the employee became permanently totally disabled, as determined by a final order of the commission based on the facts and evidence, and ends:

(i) with the death of the employee; or

(ii) when the employee is capable of returning to regular, steady work.

(b) An employer or its insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage, except that the employee may not be required to accept the work to the extent that it would disqualify the employee from Social Security disability benefits.

(c) An employee shall:

(i) fully cooperate in the placement and employment process; and

(ii) accept the reasonable, medically appropriate, part-time work.

(d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (6)(b) exceeds $500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of $500.

(e) If a work opportunity is not provided by the employer or its insurance carrier, a permanently totally disabled employee may obtain medically appropriate, part-time work subject to the offset provisions of Subsection (6)(d).

(f) (i) The commission shall establish rules regarding the part-time work and offset.

(ii) The adjudication of disputes arising under this Subsection (6) is governed by Part 8, Adjudication.

(g) The employer or its insurance carrier has the burden of proof to show that medically appropriate part-time work is available.

(h) The administrative law judge may:

(i) excuse an employee from participation in any work:

(A) that would require the employee to undertake work exceeding the employee's:

(I) medical capacity; or

(II) residual functional capacity; or

(B) for good cause; or

(ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.

(7) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.

(8) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.

(9) (a) The loss or permanent and complete loss of the use of the following constitutes total and permanent disability that is compensated according to this section:

(i) both hands;

(ii) both arms;

(iii) both feet;

(iv) both legs;

(v) both eyes; or

(vi) any combination of two body members described in this Subsection (9)(a).

(b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.

(10) (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (9), for which the insurer or self-insured employer had or has payment responsibility to determine whether the employee remains permanently totally disabled.

(b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or its insurance carrier to allow more frequent reexaminations.

(c) The reexamination may include:

(i) the review of medical records;

(ii) employee submission to one or more reasonable medical evaluations;

(iii) employee submission to one or more reasonable rehabilitation evaluations and retraining efforts;

(iv) employee disclosure of Federal Income Tax Returns;

(v) employee certification of compliance with Section 34A-2-110; and

(vi) employee completion of one or more sworn affidavits or questionnaires approved by the division.

(d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

(e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.

(f) (i) If the reexamination of a permanent total disability finding reveals evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include with the petition, documentation supporting the insurer's or self-insured employer's belief that the employee is no longer permanently totally disabled.

(ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.

(iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in

medically appropriate, part-time work under Subsection (6) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.

(g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorney fees to an attorney retained by an employee to represent the employee's interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorney fees shall be set at $1,000. The attorney fees awarded shall be paid by the employer or its insurance carrier in addition to the permanent total disability compensation benefits due.

(h) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.

(11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Section 324. Section 34A-2-802 is amended to read:

34A-2-802. Rules of evidence and procedure before commission -- Admissible evidence.

(1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

(2) The commission may receive as evidence and use as proof of any fact in dispute all evidence [~~deemed~~] considered material and relevant including[~~, but not limited to~~] the following:

(a) depositions and sworn testimony presented in open hearings;

(b) reports of attending or examining physicians, or of pathologists;

(c) reports of investigators appointed by the commission;

(d) reports of employers, including copies of time sheets, book accounts, or other records; or

(e) hospital records in the case of an injured or diseased employee.

Section 325. Section 34A-3-104 is amended to read:

34A-3-104. Employer liability for compensation.

(1) Every employer is liable for the payment of disability and medical benefits to every employee who becomes disabled, or death benefits to the dependents of any employee who dies, by reason of an occupational disease under the terms of this chapter.

(2) Compensation [~~shall not~~] may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease occurred prior to 1941.

Section 326. Section 34A-6-108 is amended to read:

34A-6-108. Collection, compilation, and analysis of statistics.

(1) The division shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The program may cover all employments whether subject to this chapter but [~~shall not~~] may not cover employments excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work injuries and occupational diseases.

(2) The division may use the functions imposed by Subsection (1) to:

(a) promote, encourage, or directly engage in programs of studies, information, and communication concerning occupational safety and health statistics;

(b) assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and

(c) arrange, through assistance, for the conduct of research and investigations which give promise of furthering the objectives of this section.

(3) The division may, with the consent of any state agency or political subdivision of the state, accept and use the services, facilities, and employees of state agencies or political subdivisions of the state, with or without reimbursement, to assist it in carrying out its functions under this section.

(4) On the basis of the records made and kept under Subsection 34A-6-301(3), employers shall file reports with the division in the form and manner prescribed by the division.

(5) Agreements between the United States Department of Labor and Utah pertaining to the collection of occupational safety and health statistics already in effect on July 1, 1973, remain in effect until superseded.

Section 327. Section 34A-6-202 is amended to read:

34A-6-202. Standards -- Procedure for issuance, modification, or revocation by

division -- Emergency temporary standard -- Variances from standards -- Statement of reasons for administrator's actions -- Judicial review -- Priority for establishing standards.

(1) (a) The division, as soon as practicable, shall issue as standards any national consensus standard, any adopted federal standard, or any adopted Utah standard, unless it determines that issuance of the standard would not result in improved safety or health.

(b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30 days after publication unless otherwise specified.

(c) If any conflict exists between standards, the division shall issue the standard that assures the greatest protection of safety or health for affected employees.

(2) The division may issue, modify, or revoke any standard as follows:

(a) (i) Whenever the administrator determines upon the basis of information submitted in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Department of Health, or a state agency or political subdivision, or on information developed by the division or otherwise available, that a rule should be promulgated to promote the objectives of this chapter, the administrator may request recommendations from the advisory council.

(ii) The administrator shall provide the advisory council with proposals, together with all pertinent factual information developed by the division, or otherwise available, including the results of research, demonstrations, and experiments.

(iii) The advisory council shall submit to the administrator its recommendations regarding the rule to be promulgated within a period as prescribed by the administrator.

(b) The division shall publish a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested parties an opportunity to submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. When the administrator determines that a rule should be issued, the division shall publish the proposed rule after the submission of the advisory council's recommendations or the expiration of the period prescribed by the administrator for submission.

(c) The administrator, in issuing standards for toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard during an employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and other information deemed appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience under this and other health and safety laws. Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired.

(d) (i) Any employer may apply to the administrator for a temporary order granting a variance from a standard issued under this section. Temporary orders shall be granted only if the employer:

(A) files an application which meets the requirements of Subsection (2)(d)(iv);

(B) establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed for compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(C) establishes that the employer is taking all available steps to safeguard the employer's employees against hazards; and

(D) establishes that the employer has an effective program for compliance as quickly as practicable.

(ii) Any temporary order shall prescribe the practices, means, methods, operations, and processes which the employer [~~must~~] shall adopt and use while the order is in effect and state in detail the employer's program for compliance with the standard. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, that the administrator may issue one interim order effective until a decision is made after public hearing.

(iii) A temporary order may not be in effect longer than the period reasonably required by the employer to achieve compliance. In no case shall the period of a temporary order exceed one year.

(iv) An application for a temporary order under Subsection (2)(d) shall contain:

(A) a specification of the standard or part from which the employer seeks a variance;

(B) a representation by the employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or some part of the standard;

(C) a detailed statement of the reasons the employer is unable to comply;

(D) a statement of the measures taken and anticipated with specific dates, to protect employees against the hazard;

(E) a statement of when the employer expects to comply with the standard and what measures the

employer has taken and those anticipated, giving specific dates for compliance; and

(F) a certification that the employer has informed the employer's employees of the application by:

(I) giving a copy to their authorized representative;

(II) posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted; and

(III) by other appropriate means.

(v) The certification required under Subsection (2)(d)(iv) shall contain a description of how employees have been informed.

(vi) The information to employees required under Subsection (2)(d)(v) shall inform the employees of their right to petition the division for a hearing.

(vii) The administrator is authorized to grant a variance from any standard or some part of the standard when the administrator determines that it is necessary to permit an employer to participate in a research and development project approved by the administrator to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(e) (i) Any standard issued under this subsection shall prescribe the use of labels or other forms of warning necessary to ensure that employees are apprised of all hazards, relevant symptoms and emergency treatment, and proper conditions and precautions of safe use or exposure. When appropriate, a standard shall prescribe suitable protective equipment and control or technological procedures for use in connection with such hazards and provide for monitoring or measuring employee exposure at such locations and intervals, and in a manner necessary for the protection of employees. In addition, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of employees is adversely affected by exposure. If medical examinations are in the nature of research as determined by the division, the examinations may be furnished at division expense. The results of such examinations or tests shall be furnished only to the division; and, at the request of the employee, to the employee's physician.

(ii) The administrator may by rule make appropriate modifications in requirements for the use of labels or other forms of warning, monitoring or measuring, and medical examinations warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(f) Whenever a rule issued by the administrator differs substantially from an existing national consensus standard, the division shall publish a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(g) Whenever a rule, standard, or national consensus standard is modified by the secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and Health Act of 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be immediately implemented by the division.

(3) (a) The administrator shall provide an emergency temporary standard to take immediate effect upon publication if the administrator determines that:

(i) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(ii) that the standard is necessary to protect employees from danger.

(b) An emergency standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in Subsection (3)(c).

(c) Upon publication of an emergency standard the division shall commence a proceeding in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days after publication of the emergency standard.

(4) (a) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall be given notice of each application and may participate in a hearing. The administrator shall issue a rule or order if the administrator determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and a workplace to the employer's employees that are as safe and healthful as those which would prevail if the employer complied with the standard.

(b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that the employer must adopt and use to the extent they differ from the standard in question.

(c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon application by an employer, employees, or by the administrator on its own motion, in the manner prescribed for its issuance under Subsection (4) at any time after six months from its issuance.

(5) The administrator shall include a statement of reasons for the administrator's actions when the administrator:

(a) issues any code, standard, rule, or order;

(b) grants any exemption or extension of time; or

(c) compromises, mitigates, or settles any penalty assessed under this chapter.

(6) Any person adversely affected by a standard issued under this section, at any time prior to 60 days after a standard is issued, may file a petition challenging its validity with the district court having jurisdiction for judicial review. A copy of the petition shall be served upon the division by the petitioner. The filing of a petition [~~shall not~~] may not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence on the record as a whole.

(7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The administrator shall also give due regard to the recommendations of the Department of Health about the need for mandatory standards in determining the priority for establishing the standards.

Section 328. Section 34A-6-301 is amended to read:

34A-6-301. Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection -- Compilation and publication of reports and information -- Rules.

(1) (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;

(ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and

(iii) question privately any such employer, owner, operator, agent, or employee.

(b) The division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.

(2) (a) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath.

(b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

(c) (i) If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to:

(A) appear to produce evidence if, as, and when so ordered; and

(B) give testimony relating to the matter under investigation or in question.

(ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.

(3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:

(i) to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases; and

(ii) through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as provided in this Subsection (3)(b).

(i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

(ii) Each employer shall, within eight hours of occurrence, notify the division of any:

(A) work-related fatality;

(B) disabling, serious, or significant injury; or

(C) occupational disease incident.

(iii) (A) Each employer shall file a report with the Division of Industrial Accidents within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or occupational disease resulting in:

(I) medical treatment;

(II) loss of consciousness;

(III) loss of work;

(IV) restriction of work; or

(V) transfer to another job.

(B) (I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.

(II) The subsequent report shall be filed with the Division of Industrial Accidents within seven days following the death or the employer's first knowledge or notification of the death.

(iv) A report is not required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents.

(v) A report is not required:

(A) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or

(B) where the employer is not aware of an exposure occasioned by the employment which results in a compensable occupational disease as defined by Section 34A-3-103.

(vi) Each employer shall provide the employee with:

(A) a copy of the report submitted to the Division of Industrial Accidents; and

(B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.

(vii) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all occupational diseases resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.

(c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

(ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives:

(I) to observe the measuring or monitoring; and

(II) to have access to the records of the measuring or monitoring, and to records that indicate their exposure to toxic materials or harmful agents.

(B) Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.

(4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.

(5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(6) (a) (i) (A) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of the violation or danger. The notice shall be:

(I) in writing, setting forth with reasonable particularity the grounds for notice; and

(II) signed by the employee or representative of employees.

(B) A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection.

(C) Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice [~~shall not~~] may not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).

(ii) (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.

(B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.

(b) (i) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace.

(ii) The division shall:

(A) by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation; and

(B) furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.

(7) (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter, including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Section 329. Section 34A-7-102 is amended to read:

34A-7-102. Standards for construction and design -- Special approved designs -- Maintenance requirements.

(1) For the purposes of this part, the standards for the design and construction of a new boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and Pressure Vessel Code published by the American Society of Mechanical Engineers.

(2) This part [~~shall not~~] may not be construed as preventing the construction and use of a boiler or pressure vessel of special design:

(a) subject to approval of the Division of Boiler and Elevator Safety; and

(b) if the special design provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

(3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall be maintained in safe operating condition for the service involved.

Section 330. Section 35A-3-106 is amended to read:

35A-3-106. Residency requirements.

To be eligible for public assistance under this chapter, an applicant [~~must~~] shall be living in Utah voluntarily with the intention of making this state the applicant's place of residence, and not for a temporary purpose.

Section 331. Section 35A-3-108 is amended to read:

35A-3-108. Assignment of support.

(1) (a) The division shall obtain an assignment of support from each applicant or client regardless of whether the payment is court ordered.

(b) Upon the receipt of assistance, any right to receive support from another person passes to the state, even if the client has not executed and delivered an assignment to the division as required by Subsection (1)(a).

(c) The right to support described in Subsection (1)(b) includes a right to support in the applicant's or client's own behalf or in behalf of any family member for whom the applicant or client is applying for or receiving assistance.

(2) An assignment of support or a passing of rights under Subsection (1)(b) includes payments ordered, decreed, or adjudged by any court within this state, any other state, or territory of the United States and is not in lieu of, and [~~shall not~~] does not supersede or alter, any other court order, decree, or judgment.

(3) When an assignment is executed or the right to support passes to the department under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the support paid to the division is a refund.

(4) All sums refunded, except any amount which is required to be credited to the federal government, shall be deposited into the General Fund.

(5) On and after the date a family stops receiving cash assistance, an assignment of support under Subsection (1) [~~shall not~~] does not apply to any support that accrued before the family received such assistance if the department has not collected the support by the date the family stops receiving cash assistance, if the assignment is executed on or after October 1, 1998.

(6) The department shall distribute arrearages to families in accordance with the Social Security Act, 42 U.S.C. Sec. 657.

(7) The total amount of child support assigned to the department and collected under this section may not exceed the total amount of cash assistance received by the recipient.

Section 332. Section 35A-3-304 is amended to read:

35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.

(1) (a) Within 20 business days of the date of enrollment, a parent client shall:

(i) be assigned an employment counselor; and

(ii) complete an assessment provided by the division regarding the parent client's:

(A) family circumstances;

(B) education;

(C) work history;

(D) skills; and

(E) ability to become self-sufficient.

(b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be completed by the parent client with the assistance of the division.

(2) (a) Within 15 business days of a parent client completing an assessment, the division and the parent client shall enter into an employment plan.

(b) The employment plan shall have a target date for entry into employment.

(c) The division shall provide a copy of the employment plan to the parent client.

(d) As to the parent client, the plan may include:

(i) job searching requirements;

(ii) if the parent client does not have a high school diploma, participation in an educational program to obtain a high school diploma, or its equivalent;

(iii) education or training necessary to obtain employment;

(iv) a combination of work and education or training;

(v) assisting the Office of Recovery Services in good faith to:

(A) establish the paternity of a minor child; and

(B) establish or enforce a child support order; and

(vi) if the parent client is a drug dependent person as defined in Section 58-37-2, participation in available treatment for drug dependency and progress toward overcoming that dependency.

(e) As to the division, the plan may include:

(i) providing cash and other types of public and employment assistance, including child care;

(ii) assisting the parent client to obtain education or training necessary for employment;

(iii) assisting the parent client to set up and follow a household budget; and

(iv) assisting the parent client to obtain employment.

(f) The division may amend the employment plan to reflect new information or changed circumstances.

(g) If immediate employment is an activity contained in the employment plan the parent client shall:

(i) promptly commence a search for a specified number of hours each week for employment; and

(ii) regularly submit a report to the division on:

(A) how time was spent in search for a job;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the division.

(h) (i) If full-time education or training to secure employment is an activity contained in an employment plan, the parent client shall promptly undertake a full-time education or training program.

(ii) The employment plan may describe courses, education or training goals, and classroom hours.

(i) (i) As a condition of receiving cash assistance under this part, a parent client shall agree to make a good faith effort to comply with the employment plan.

(ii) If a parent client consistently fails to show good faith in complying with the employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of the cash assistance services provided under this part.

(iii) The division shall establish a process to reconcile disputes between a client and the division as to whether:

(A) the parent client has made a good faith effort to comply with the employment plan; or

(B) the division has complied with the employment plan.

(3) (a) Except as provided in Subsection (3)(b), a parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(i) 24 months; or

(ii) the completion of the education and training requirements of the employment plan.

(b) A parent client may participate in education or training for up to six months beyond the 24-month limit of Subsection (3)(a)(i) if:

(i) the parent client is employed for 80 or more hours a month; and

(ii) the extension is for good cause shown and approved by the director.

(c) A parent client who receives an extension under Subsection (3)(b) remains subject to Subsection (4).

(4) (a) A parent client with a high school diploma or equivalent who has received 24 months of education or training shall participate in full-time work activities.

(b) The 24 months need not be continuous and the department may define "full-time work activities" by rule.

(5) As a condition for receiving cash assistance on behalf of a minor child under this part, the minor child [~~must~~] shall be:

(a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and 53A-11-101.7; or

(b) exempt from school attendance under Section 53A-11-102.

(6) This section does not apply to a person who has received diversion assistance under Section 35A-3-303.

(7) (a) The division shall recruit and train volunteers to serve as mentors for parent clients.

(b) A mentor may advocate on behalf of a parent client and help a parent client:

(i) develop life skills;

(ii) implement an employment plan; or

(iii) obtain services and supports from:

(A) the volunteer mentor;

(B) the division; or

(C) civic organizations.

Section 333. Section 35A-3-310.5 is amended to read:

35A-3-310.5. Child care providers -- Criminal background checks -- Payment of costs -- Prohibitions -- Department rules.

(1) This section applies to a child care provider who:

(a) is selected by an applicant for, or a recipient of, a child care assistance payment;

(b) is not required to undergo a criminal background check with the Department of Health, Bureau of Child Care Licensing;

(c) is not a license exempt child care center or program; and

(d) is an eligible child care provider under department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Each child care provider identified under Subsection (1) shall submit to the department the name and other identifying information, which shall include a set of fingerprints, of:

(i) existing, new, and proposed providers of child care; and

(ii) individuals who are at least 18 years of age and reside in the premises where the child care is provided.

(b) The department may waive the fingerprint requirement under Subsection (2)(a) for an individual who has:

(i) resided in Utah for five years prior to the required submission; or

(ii) (A) previously submitted a set of fingerprints under this section for a national criminal history record check; and

(B) resided in Utah continuously since submitting the fingerprints.

(c) The Utah Division of Criminal Investigation and Technical Services shall process and conduct background checks on all individuals as requested by the department, including submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal history background check of the individual.

(d) If the department waives the fingerprint requirement under Subsection (2)(b), the Utah Division of Criminal Investigation and Technical Services may allow the department or its representative access to the division's data base to determine whether the individual has been convicted of a crime.

(e) The child care provider shall pay the cost of the history background check provided under Subsection (2)(c).

(3) (a) Each child care provider identified under Subsection (1) shall submit to the department the name and other identifying information of an individual, age 12 through 17, who resides in the premises where the child care is provided.

(b) The identifying information referred to in Subsection (3)(a) does not include fingerprints.

(c) The department or its representative shall access juvenile court records to determine whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile court of committing an act which, if committed by an adult, would be a felony or misdemeanor if:

(i) the individual described in Subsection (2) is under the age of 28; or

(ii) the individual described in Subsection (2):

(A) is over the age of 28; and

(B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(4) Except as provided in Subsection (5), a child care provider under this section may not permit an individual who has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor to:

(a) provide subsidized child care; or

(b) reside at the premises where subsidized child care is provided.

(5) (a) The department may make a rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection (4):

(i) a specific misdemeanor;

(ii) a specific act adjudicated in juvenile court, which if committed by an adult would be a misdemeanor; and

(iii) background checks of individuals other than the provider who are residing at the premises where

subsidized child care is provided if that child care is provided in the child's home.

(b) In accordance with criteria established by rule, the executive director or the director's designee may consider and exempt individual cases, not otherwise exempt under Subsection (5)(a), from the restrictions of Subsection (4).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish by rule:

(a) whether a child care subsidy payment should be made prior to the completion of a background check, particularly in the case of a delay in making or completing the background check; and

(b) if, and how often, a child care provider [~~must~~] shall resubmit the information required under Subsections (2) and (3).

Section 334. Section 35A-3-503 is amended to read:

35A-3-503. Legislative intent.

(1) The Legislature finds that public policy should promote and encourage a strong civic sector. Civic organizations have an important role that cannot be adequately addressed through either private or public sector action. Important public values such as the condition of our neighborhoods, the character of our children, and the renewal of our cities directly depend on the strength of families, neighborhoods, and grassroots community organizations, as well as the vitality of private and religious institutions that care for those in need. Civic organizations transmit values between generations, encourage cooperation between citizens, and ensure that our communities are livable and nurturing environments. The value provided to the state by civic organizations is called social capital.

(2) The purpose of this part is to promote the availability of social capital. Using social capital, clients of and applicants for services under this chapter may receive a wide array of services and supports that cannot be provided by state government alone. Social capital links all parts of our society together by creating opportunities for service and giving. It facilitates trust and cooperation and enhances investments in physical and human capital.

(3) In enacting this part, the Legislature recognizes the constitutional limits of state government to sustain civic institutions that provide social capital. While state government has always depended on these institutions, it does not create them nor can it replace them. This part recognizes that state government [~~must~~] shall respect, recognize, and, wherever possible, constitutionally encourage strong civic institutions that sustain a sense of community and humanize our lives.

Section 335. Section 35A-4-303 is amended to read:

35A-4-303. Determination of contribution rates.

(1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio, determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period;

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period; or

(iii) if two fiscal years of data are not available, the data of one fiscal year shall be divided by the total taxable wages for the same time period.

(2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period; or

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period.

(b) Beginning January 1, 2005, the division shall calculate the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction.

(c) Beginning January 1, 2009, the division shall calculate the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or more.

(3) (a) Beginning January 1, 2000, the division shall by administrative decision set the reserve factor at a rate that shall sustain an adequate reserve.

(b) For the purpose of setting the reserve factor:

(i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30 preceding the

computation date is determined to be an adequate reserve;

(iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;

(iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;

(v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(vi) the reserve factor will be set on or before January 1 of each year; and

(vii) monies made available to the state under Section 903 of the Social Security Act, as amended, which are received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any subsequent rate year.

(4) (a) On or after January 1, 2004, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(c) The overall contribution rate does not include the addition of any penalty applicable to an employer as a result of delinquency in the payment of contributions as provided in Subsection (9).

(d) The overall contribution rate does not include the addition of any penalty applicable to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

(5) Except as provided in Subsection (9), each new employer shall pay a contribution rate based on the average benefit cost rate experienced by employers of the major industry as defined by department rule to which the new employer belongs, the basic contribution rate to be determined as follows:

(a) Except as provided in Subsection (5)(b), by January 1 of each year, the basic contribution rate to be used in computing the employer's overall contribution rate is the benefit cost rate which is the greater of:

(i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding the remaining fraction, if any; or

(ii) 1%.

(b) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate.

(6) Notwithstanding any other provision of this chapter, and except as provided in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.

(7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:

(a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;

(b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or

(c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

(8) (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):

(i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:

(A) the filing of contribution reports;

(B) the payment of contributions; and

(C) after January 1, 1985, the benefit costs of both employers;

(ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but only to the extent as defined under Subsection 35A-4-304(3)(c); and

(iii) if an employer transfers its trade or business, or a portion of its trade or business, as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.

(b) An employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

(c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.

(9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall contribution rate on or after January 1, 1988, only with respect to new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date on or after January 1, 1985.

(b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, an employer who fails to pay all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.

(c) An employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in which the payment was made.

(d) Delinquency in filing contribution reports [~~shall~~] may not be the basis for denial of a rate less than the maximum contribution rate.

Section 336. Section 35A-4-304 is amended to read:

35A-4-304. Special provisions regarding transfers of unemployment experience and assignment rates.

(1) As used in this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(c) "Trade or business" includes the employer's workforce.

(d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.

(3) (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.

(b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.

(ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.

(iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.

(d) The transfer of some or all of an employer's workforce to another employer shall be considered a

transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.

(4) (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business [~~shall not~~] may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).

(c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:

(i) the cost of acquiring the business;

(ii) whether the person continued the business enterprise of the acquired business;

(iii) how long the business enterprise was continued; or

(iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:

(i) (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than $5,000.

(B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.

(b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.

(ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Section 337. Section 35A-4-305 is amended to read:

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division are subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period.

(ii) If a report is filed after the required time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within 10 days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectible and removed from the records of the division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of any information it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within 10 days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the determination.

(d) The amount of contribution determined under Subsection (2)(a) is subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, an employer defaults in the payment of contributions, interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest, or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah, the division may employ private collectors providing debt collection services outside Utah.

(B) Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action.

(C) The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the applicable rules of the department.

(ii) (A) A private collector may receive as compensation up to 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or postjudgment remedy instituted by the private collector with the approval of the division.

(B) The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

(iv) (A) A civil action may not be maintained by a private collector without specific prior written approval of the division.

(B) When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of a distribution of an employer's assets under an order of a court under

the laws of Utah, including a receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under a chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be specified in the warrant, not more than 60 days from the date of the warrant.

(b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county.

(ii) The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the docketed warrant shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of an employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) (i) An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due.

(ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(7) (a) If an employer is delinquent in the payment of a contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) A person notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(8) (a) (i) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter.

(ii) The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) (i) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period.

(ii) The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) (i) For each failure by an employer to conform to this Subsection (8) the division shall, unless good

cause is shown, assess a $50 penalty if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250 per filing.

(iii) The penalty is to be collected in the same manner as contributions due under this chapter.

(d) (i) The division shall prescribe rules providing standards for determining which contribution reports [~~must~~] shall be filed on magnetic or electronic media or in other machine-readable form.

(ii) In prescribing these rules, the division:

(A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;

(B) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and

(C) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).

(9) (a) (i) An employer liable for payments in lieu of contributions shall file Reimbursable Employment and Wage Reports.

(ii) The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date.

(iii) A report postmarked on or before the due date is considered timely.

(b) (i) Unless the employer can show good cause, the division shall assess a $50 penalty against an employer who does not file Reimbursable Employment and Wage Reports within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

(ii) If the filing is more than 15 days late, the division shall assess an additional penalty of $50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed $250 per filing.

(iii) The division shall assess and collect the penalties referred to in this Subsection (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

(10) If a person liable to pay a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay it after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a warrant with the clerk of the district court.

(ii) For the purposes of this Subsection (11)(b):

(A) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(B) "Mechanics' lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(C) "Person" means:

(I) an individual;

(II) a trust;

(III) an estate;

(IV) a partnership;

(V) an association;

(VI) a company;

(VII) a limited liability company;

(VIII) a limited liability partnership; or

(IX) a corporation.

(D) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(E) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(I) the property is in existence and the interest has become protected under the law against a

subsequent judgment lien arising out of an unsecured obligation; and

(II) to the extent that, at that time, the holder has parted with money or money's worth.

Section 338. Section 35A-4-309 is amended to read:

35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

(1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

(a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.

(b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.

(ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.

(d) (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.

(ii) This election is not terminable by the organization for that year or the next year.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination [~~must~~] shall be filed and may permit an election to be retroactive.

(f) (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.

(ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus [~~1/2~~] one-half of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).

(c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.

(ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.

(iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.

(iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.

(e) Past due payments of amounts in lieu of contributions are subject to the same interest and

penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.

(4) (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.

(b) The amount of the deposit shall be determined in accordance with this Subsection (4).

(c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.

(ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.

(d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).

(ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).

(iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.

(iv) (A) The division may, at any time, review the adequacy of the deposit made by any organization.

(B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.

(e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.

(f) (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

(ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

(5) (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of [~~1/2~~] one-half of extended benefits paid that are attributable to service in the employ of the employer.

(b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).

(c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(d) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(6) (a) (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.

(ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).

(b) (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.

(ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

(d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.

(7) (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.

(b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Section 339. Section 35A-4-311 is amended to read:

35A-4-311. Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.

(1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:

(a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.

(b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election [~~must~~] shall be filed by January 31 of the year in which the termination is to be effective.

(d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination [~~must~~] shall be filed and may permit an election to be retroactive.

(f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).

(c) (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.

(ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

(iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.

(iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.

(b) (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:

(A) all contributions have been made timely; and

(B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and

(B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.

(4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(5) (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of

the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Section 340. Section 35A-4-404 is amended to read:

35A-4-404. Eligibility for benefits after receiving workers' compensation or occupational disease compensation.

(1) Notwithstanding any requirements involving base periods or other benefit compensational factors provided for under this chapter a person who has had a continuous period of sickness or injury for which [~~he~~] the person was compensated under the workers' compensation or the occupational disease laws of this state or under federal law shall, if [~~he~~] the person is otherwise eligible, thereafter be entitled to receive the unemployment compensation benefits [~~he~~] the person would have been entitled to receive under the law and regulations based on [~~his~~] the person's potential eligibility at the time of [~~his~~] the person's last employment.

(2) Benefit rights [~~shall not be~~] are not preserved under this section unless the individual:

(a) files a claim for benefits with respect to a week no later than 90 days after the end of the continuous period of sickness or injury; and

(b) files the claim with respect to a week within the 36-month period immediately following the commencement of such period of sickness or injury.

Section 341. Section 35A-4-501 is amended to read:

35A-4-501. Unemployment Compensation Fund -- Administration -- Contents -- Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances under Social Security Act.

(1) (a) There is established the Unemployment Compensation Fund, separate and apart from all public money or funds of this state, that shall be administered by the department exclusively for the purposes of this chapter.

(b) This fund shall consist of the following money, all of which shall be mingled and undivided:

(i) all contributions collected under this chapter, less refunds of contributions made from the clearing account under Subsection 35A-4-306(5);

(ii) interest earned upon any money in the fund;

(iii) any property or securities acquired through the use of money belonging to the fund;

(iv) all earnings of the property or securities;

(v) all money credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and

(vi) all other money received for the fund from any other source.

(2) (a) The state treasurer shall:

(i) be the treasurer and custodian of the fund;

(ii) administer the fund in accordance with the directions of the division; and

(iii) pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.

(b) The division shall maintain within the fund three separate accounts:

(i) a clearing account;

(ii) an unemployment trust fund account; and

(iii) a benefit account.

(c) All money payable to the fund, upon receipt by the division, shall be immediately deposited in the clearing account.

(d) (i) All money in the clearing account after clearance shall, except as otherwise provided in this section, be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and 35A-4-306(5) may be paid from the clearing account or the benefit account.

(e) The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund in the United States treasury.

(f) Money in the clearing and benefit accounts may be deposited in any depository bank in which general funds of this state may be deposited, but no public deposit insurance charge or premium may be paid out of the fund.

(g) (i) Money in the clearing and benefit accounts may not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank.

(ii) The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state.

(iii) Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state.

(h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the state treasurer's duties in connection with the unemployment compensation fund provided for under this chapter.

(ii) The liability on the official bond shall be effective immediately upon the enactment of this provision, and that liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.

(iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.

(3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund shall, except as set forth in this section, be used exclusively for the payment of benefits and for refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).

(ii) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts standing to this state's account in the fund, as it considers necessary for the payment of those benefits and refunds for a reasonable future period.

(iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and shall pay benefits and refunds from the account by means of warrants issued by the division in accordance with rules prescribed by the department.

(B) Expenditures of these money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(b) Money in the state's account in the unemployment trust fund that were collected under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be requisitioned from the state's account and used in the payment of expenses incurred by the department for the administration of the state's unemployment law and public employment offices, if the expenses are incurred and the withdrawals are made only after and under a specific appropriation of the Legislature that specifies:

(i) the purposes and amounts;

(ii) that the money may not be obligated after the two-year period that began on the date of the enactment of the appropriation law; and

(iii) that the total amount which may be used during a fiscal year [~~shall not~~] may not exceed the amount by which the aggregate of the amounts credited to this state's account under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for administration during the same 35 fiscal years.

(A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall be charged against equivalent amounts that were first credited and that have not previously been so charged. An amount used during any fiscal year may not be charged against any amount credited during a fiscal year earlier than the 34th preceding fiscal year.

(B) Except as appropriated and used for administrative expenses, as provided in this section, money transferred to this state under Section 903 of the Social Security Act as amended, may be used only for the payment of benefits.

(C) Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses, upon request of the governor, under Section 903(c) of the Social Security Act.

(D) The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited.

(E) Money deposited shall, until expended, remain a part of the unemployment fund and, if not expended, shall be returned promptly to the account of this state in the unemployment trust fund.

(F) The money available by reason of this legislative appropriation [~~shall not~~] may not be expended or available for expenditure in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(c) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States of America to the credit of the state's account in the unemployment trust fund, as provided in Subsection (2).

(4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for the state a separate book account of all money deposited in the fund by the state for benefit purposes, together with the state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals.

(b) (i) When the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all money belonging to the unemployment compensation fund of the state shall be administered by the division as a trust fund for the purpose of paying benefits under this chapter,

and the division shall have authority to hold, invest, transfer, sell, deposit, and release the money, and any properties, securities, or earnings acquired as an incident to the administration.

(ii) The money shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America, of the state, or of any county, city, town, or school district of the state, at current market prices for the bonds.

(iii) The investment shall be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

Section 342. Section 35A-4-506 is amended to read:

35A-4-506. Special Administrative Account.

(1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."

(2) (a) Interest and penalties collected under this chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.

(b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.

(c) The money may not be expended in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.

(4) Money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.

(5) Money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Federal Social Security Act, 42 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.

(6) Money in the restricted account shall be available to the division for expenditure in accordance with this section and [~~shall not~~] may not lapse at any time or be transferred to any other fund or account except as directed by the Legislature.

(7) The state treasurer shall pay all warrants drawn upon it by the division or its duly authorized agent in accordance with such rules as the department shall prescribe.

(8) (a) The state treasurer shall be liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account provided for under this chapter.

(b) Liability on the official bond shall exist in addition to any liability upon any separate bond existent on the effective date of this provision or that may be given in the future.

(c) Any money recovered on any surety bond losses sustained by the Special Administrative Expense Account shall be deposited in the restricted account or in the General Fund if so directed by the Legislature.

Section 343. Section 55-5-2 is amended to read:

55-5-2. Licensing agency -- Duties of Utah State Office of Rehabilitation.

(1) The [~~Division of Vocational Rehabilitation, Office of Public Instruction,~~] Division of Services for the Blind and Visually Impaired, Utah State Office of Rehabilitation is designated as the licensing agency for the purpose of carrying out [~~the provisions of this act, and shall~~] this chapter.

[~~(1) Take such steps as are necessary and proper~~]

(2) The Division of Services for the Blind and Visually Impaired, shall:

(a) take necessary steps to carry out the provisions of this [~~act.~~] chapter;

[~~(2) With~~] (b) with the approval of the custodian having charge of the building, park or other property in which the vending stand or other enterprise is to be located, select a location for such stand or enterprise and the type of equipment to be provided[~~.~~];

[~~(3) Construct~~] (c) construct and equip stands [~~at such place as may be deemed advisable~~] where blind persons may be trained under the supervision of the [~~Division of Vocational Rehabilitation~~] Division of Services for the Blind and Visually Impaired to carry on a business as a vending stand operator[~~.~~];

[~~(4) Provide~~] (d) provide adequate supervision of [~~such persons~~] each person licensed to operate vending stands or other enterprises to ensure efficient and orderly management [~~thereof.~~]; and

[~~(5) Prescribe such rules and regulations as are~~]

(e) make rules necessary for the proper operation of [~~such~~] vending stands or other enterprises.

Section 344. Effective date.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 10, 2011.

(2) The amendments to the following sections take effect on July 1, 2011:

(a) Section 32B-1-407 (Effective 07/01/11);

(b) Section 32B-1-505 (Effective 07/01/11);

(c) Section 32B-6-407 (Effective 07/01/11); and

(d) Section 32B-8-304 (Effective 07/01/11).

(3) The amendments to Section 20A-7-702 (Effective 01/01/12) take effect on January 1, 2012.

CHAPTER 298
H. B. 220
Passed March 8, 2011
Approved March 25, 2011
Effective May 10, 2011

CIVICS EDUCATION AMENDMENTS

Chief Sponsor: Michael T. Morley
Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill modifies requirements for instruction in American history and government.

Highlighted Provisions:

This bill:

- requires instruction in:
  - forms of government, including the United States' form of government, a compound constitutional republic; and
  - political philosophies and economic systems; and
- requires school curricula to include a thorough study of American historical documents.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-13-101.4, as last amended by Laws of Utah 2002, Chapter 124

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

Section 1. Section 53A-13-101.4 is amended to read:

53A-13-101.4. Instruction in American history and government -- Study and posting of American heritage documents.

(1) The Legislature recognizes that a proper understanding of American history and government is essential to good citizenship, and that the public schools are the primary public institutions charged with responsibility for assisting children and youth in gaining that understanding.

(2) (a) The State Board of Education and local school boards shall periodically review school curricula and activities to ensure that effective instruction in American history and government is taking place in the public schools.

(b) The boards shall solicit public input as part of the review process.

(c) Instruction in American history and government shall include a study of:

(i) forms of government, such as a republic, a pure democracy, a monarchy, and an oligarchy;

(ii) political philosophies and economic systems, such as socialism, individualism, and free market capitalism; and

(iii) the United States' form of government, a compound constitutional republic.

(3) School curricula and activities shall include [~~the appropriate~~] a thorough study of historical documents such as:

(a) the Declaration of Independence;

(b) the United States Constitution;

(c) the national motto;

(d) the pledge of allegiance;

(e) the national anthem;

(f) the Mayflower Compact;

(g) the writings, speeches, documents, and proclamations of the Founders and the Presidents of the United States;

(h) organic documents from the pre-Colonial, Colonial, Revolutionary, Federalist, and post Federalist eras;

(i) United States Supreme Court decisions;

(j) Acts of the United States Congress, including the published text of the Congressional Record; and

(k) United States treaties.

(4) To increase student understanding of, and familiarity with, American historical documents, public schools may display historically important excerpts from, or copies of, those documents in school classrooms and common areas as appropriate.

(5) There shall be no content-based censorship of American history and heritage documents referred to in this section due to their religious or cultural nature.

(6) Public schools shall display "In God we trust," which is declared in 36 U.S.C. 302 to be the national motto of the United States, in one or more prominent places within each school building.

CHAPTER 299
H. B. 260
Passed March 10, 2011
Approved March 25, 2011
Effective August 1, 2011

MECHANICS' LIENS REVISIONS

Chief Sponsor: David Clark
Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

- provides priority between construction loans and mechanics' liens;
- modifies provisions related to the State Construction Registry;
- modifies the information by which the State Construction Registry is to be indexed;
- requires each notice or document submitted for inclusion in the State Construction Registry to contain specified information;
- modifies provisions related to building permits and notices of commencement;
- modifies requirements related to the filing of a preliminary notice;
- eliminates the requirement to file a notice of commencement on a private project;
- requires the original contractor and each subcontractor on a private project to file a preliminary notice;
- prohibits an original contractor or subcontractor who fails to file a preliminary notice on a private project from claiming a mechanics' lien;
- requires a construction lender to file with the database a notice of construction loan and, if a default occurs, a notice of default relating to a construction loan;
- repeals obsolete language;
- modifies the requirements for a notice of completion;
- modifies the requirements related to a standardized building permit form; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on August 1, 2011.

This bill coordinates with H.B. 203, Codification of State Construction and Fire Codes, to technically merge substantive amendments.

This bill coordinates with H.B. 115, Mechanics' Liens Amendments, by technically merging substantive amendments.

Utah Code Sections Affected:

AMENDS:

14-1-20, as last amended by Laws of Utah 2010, Chapter 378
14-2-5, as last amended by Laws of Utah 2010, Chapter 378
38-1-1, Utah Code Annotated 1953
38-1-5, Utah Code Annotated 1953
38-1-27, as last amended by Laws of Utah 2009, Chapters 183 and 239
38-1-30, as last amended by Laws of Utah 2008, Chapter 382
38-1-31, as last amended by Laws of Utah 2009, Chapter 50
38-1-32, as last amended by Laws of Utah 2009, Chapter 50
38-1-33, as last amended by Laws of Utah 2010, Chapter 76
58-56-20, as last amended by Laws of Utah 2010, Chapter 310
63G-6-506, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

38-1-30.5, Utah Code Annotated 1953
38-1-31.5, Utah Code Annotated 1953
38-1-32.5, Utah Code Annotated 1953
38-1-32.7, Utah Code Annotated 1953

REPEALS:

38-1-37, as last amended by Laws of Utah 2005, Chapter 64

Utah Code Sections Affected by Coordination Clause:

15A-1-209, Utah Code Annotated 1953
38-1-30.5, Utah Code Annotated 1953
38-1-2, as last amended by Laws of Utah 2006, Chapter 297
38-1-5, Utah Code Annotated 1953
38-1-19, Utah Code Annotated 1953
38-1-27, as last amended by Laws of Utah 2009, Chapters 183 and 239
38-1-32, as last amended by Laws of Utah 2009, Chapter 50

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 14-1-20 is amended to read:

14-1-20. Preliminary notice requirement.

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section [~~38-1-32~~] 38-1-32.5, except that this section does not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section [~~38-1-31~~] 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) shall be provided prior to commencement of any action on the payment bond.

Section 2. Section 14-2-5 is amended to read:

14-2-5. Preliminary notice requirement.

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this section does not apply[~~: (a)~~] to a person performing labor for wages[~~; or~~].

[~~(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the project or improvement for which labor, service, equipment, or material is furnished.~~]

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) shall be provided prior to commencement of any action on the payment bond.

Section 3. Section 38-1-1 is amended to read:

38-1-1. Public buildings not subject to act.

[~~The provisions of this~~] Except as provided in Sections 38-1-27, 38-1-30 through 38-1-37, and 38-1-40 relating to the State Construction Registry, this chapter [~~shall~~] does not apply to any public building, structure, or improvement.

Section 4. Section 38-1-5 is amended to read:

38-1-5. Relation back and priority of liens.

[~~The liens herein provided for shall relate~~]

(1) As used in this section:

(a) "First preliminary notice filing" means the filing of a preliminary notice that is:

(i) the earliest preliminary notice filed on a private project, as defined in Section 38-1-27;

(ii) filed on or after August 1, 2011;

(iii) not filed on a project that, according to the law in effect before August 1, 2011, commenced before August 1, 2011;

(iv) not canceled under Subsection 38-1-32(6); and

(v) not withdrawn under Subsection 38-1-32(8).

(b) "Project property" means the real property on which a building or structure is being constructed or altered or on which an improvement is made.

(2) A lien under this chapter relates back to, and [~~take~~] takes effect as of, the time of the [~~commencement to do work or furnish materials on the ground for the structure or improvement, and shall have~~] first preliminary notice filing.

(3) (a) Subject to Subsection (3)(b), a lien under this chapter has priority over:

(i) any lien, mortgage, or other encumbrance [~~which may have attached subsequently to the time when the building, improvement or structure was commenced, work begun, or first material furnished on the ground; also over~~] that attaches after the first preliminary notice filing; and

(ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice and which was unrecorded at the time [~~the building, structure or improvement was commenced, work begun, or first material furnished on the ground~~] of the first preliminary notice filing.

(b) A recorded mortgage or trust deed of a construction lender, as defined in Section 38-1-27, has priority over each lien under this chapter of a claimant who files a preliminary notice in accordance with Section 38-1-32 before the mortgage or trust deed is recorded if the claimant:

(i) accepts payment in full for labor, service, equipment, and material that the claimant furnishes to the project before the mortgage or trust deed is recorded; and

(ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under Subsection 38-1-32(8).

Section 5. Section 38-1-27 is amended to read:

38-1-27. State Construction Registry.

(1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

(a) "Alternate filing" means a legible and complete filing made in a manner established by the division under Subsection (2)(e) other than an electronic filing.

(b) "Cancel" means to indicate that a filing is no longer given effect.

(c) "Construction lender" means a lender who provides construction financing for a private project.

[~~(c)~~] (d) "Construction project[~~,~~]" or "project[~~,~~]" [~~or "improvement"~~] means all labor, service, equipment, and materials provided[~~: (i)~~] under an original contract[~~; or~~].

[~~(ii) by, or under contracts with, an owner-builder.~~]

[~~(d)~~] (e) "Database" means the State Construction Registry created in this section.

[~~(e)~~] (f) (i) "Designated agent" means the third party the [~~Division of Occupational and Professional Licensing~~] division contracts with to create and maintain the State Construction Registry.

(ii) The designated agent is not an agency, instrumentality, or a political subdivision of the state.

[~~(f)~~] (g) "Division" means the Division of Occupational and Professional Licensing.

(h) "Entry number" means the reference number that:

(i) the designated agent assigns to each notice or other document filed with the database; and

(ii) is unique for each notice or other document.

(i) "Government project" means a construction project undertaken by or for:

(i) the state, including a department, division, or other agency of the state; or

(ii) a county, city, town, school district, local district, special service district, community development and renewal agency, or other political subdivision of the state.

(j) "Government project-identifying information" means:

(i) the lot or parcel number of each lot included in the project property that has a lot or parcel number; and

(ii) the unique project number assigned by the designated agent.

[~~(g)~~] (k) "Interested person" means a person who may be affected by a construction project.

(l) "Private project" means a construction project that is not a government project.

[~~(h)~~] (m) "Program" means the State Construction Registry Program created in this section.

(n) "Project property" means the real property on which a construction project occurs or will occur.

(2) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor who meets the requirements of Sections 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

(a) (i) assist in protecting public health, safety, and welfare; and

(ii) promote a fair working environment;

(b) be overseen by the division with the assistance of the designated agent;

(c) provide a central repository for [~~notices of commencement, preliminary notices, and notices of completion filed in connection with all privately owned construction projects as well as all state and local government owned construction projects throughout Utah~~] all notices filed with the database under Section 38-1-30.5, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33, or 38-1-40;

(d) [~~be~~] make accessible [~~for filing and review~~], by way of the program Internet website [~~of~~]:

(i) the filing and reviewing of notices described in Subsection (2)(c); and

[~~(i) notices of commencement;~~]

[~~(ii) preliminary notices;~~]

[~~(iii) a notice of intent to file notice of final completion;~~]

[~~(iv) a notice for remaining amounts due to complete the contract; and~~]

[~~(v) notices of completion;~~]

(ii) the transmitting of building permit information under Subsection 38-1-31(2)(a) and the reviewing of that information;

(e) accommodate:

(i) electronic filing of the notices described in Subsection (2)[~~(d)~~](c) and electronic transmitting of building permit information described in Subsection (2)(d)(ii); and

(ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax, or any other alternate method as provided by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(f) (i) provide electronic notification for up to three email addresses for each interested person or company who requests notice from the construction notice registry; and

(ii) provide alternate means of notification for a person who makes an alternate filing, including U.S. mail, telefax, or any other method as prescribed by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(3) (a) The designated agent shall provide notice of all other filings for a project to any person who files a notice of commencement, preliminary notice, or notice of completion for that project, unless the person:

(i) requests that the person not receive notice of other filings; or

(ii) does not provide the designated agent with the person's contact information in a manner that adequately informs the designated agent.

(b) An interested person may request notice of filings related to a project.

(c) The database shall be indexed by:

(i) the name of the property owner [~~name~~];

(ii) the name of the original contractor [~~name~~];

(iii) subdivision, development, or other project name, if any;

[~~(iv) project address;~~]

[~~(v)~~] (iv) lot or parcel number;

[~~(vi) unique project number assigned by the designated agent; and~~]

(v) the address of the project property;

(vi) entry number;

(vii) the name of the county in which the project property is located;

(viii) for private projects:

(A) the tax parcel identification number of each parcel included in the project property; and

(B) the building permit number;

(ix) for government projects, the government project-identifying information; and

[~~(vii)~~] (x) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

(4) (a) In accordance with the process required by Section 63J-1-504, the division shall establish the fees for:

[~~(i) a notice of commencement;~~]

[~~(ii) a preliminary notice;~~]

[~~(iii) a notice of intent to file notice of final completion;~~]

[~~(iv) a notice for remaining amounts due to complete the contract;~~]

[~~(v) a notice of completion;~~]

(i) notices described in Subsection (2)(c);

[~~(vi)~~] (ii) a request for notice;

[~~(vii)~~] (iii) providing a required notice by an alternate [~~method of delivery~~] filing;

[~~(viii)~~] (iv) a duplicate receipt of a filing; and

[~~(ix)~~] (v) account setup for a person who wishes to be billed periodically for filings with the database.

(b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably necessary to create and maintain the database.

(c) The fees established by the division may vary by method of filing if one form of filing is more costly to process than another form of filing.

(d) The division may provide by contract that the designated agent may retain all fees collected by the designated agent except that the designated agent shall remit to the division the cost of the division's oversight under Subsection (2)(b).

(5) (a) The database is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified by the division.

(b) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Information contained in a public record contained in the database shall be requested from the designated agent.

(d) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (5)(c).

(e) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the database, a person may not request the information from the division.

(f) (i) A person may request information that is not a public record contained in the database from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The division shall inform the designated agent of how to direct inquiries made to the designated agent for information that is not a public record contained in the database.

(6) The following are not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

(a) the filing of a notice permitted by this chapter;

(b) the rejection of a filing permitted by this chapter; or

(c) other action by the designated agent in connection with a filing of any notice permitted by this chapter.

(7) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the database.

(8) (a) A person who is delinquent on the payment of a fee established under Subsection (4) may not file a notice with the database.

(b) A determination that a person is delinquent on the payment of a fee for filing established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the method of that person's payment of fees for filing notices with the database after issuance of the order.

(9) If a notice is filed by a third party on behalf of another, the notice is considered to be filed by the person on whose behalf the notice is filed.

(10) A person filing a notice of commencement, preliminary notice, or notice of completion is responsible for verifying the accuracy of information entered into the database, whether the person files electronically or by alternate or third party filing.

(11) Each notice or other document submitted for inclusion in the database and for which this chapter does not specify information required to be included in the notice or other document shall contain:

(a) the name of the county in which the project property to which the notice or other document applies is located;

(b) for a private project:

(i) the tax parcel identification number of each parcel included in the project property; or

(ii) the number of the building permit for the construction project on the project property; and

(c) for a government project, the government project-identifying information.

Section 6. Section 38-1-30 is amended to read:

38-1-30. Third party contract -- Designated agent.

(1) The division shall contract in accordance with Title 63G, Chapter 6, Utah Procurement Code, with a third party to establish and maintain the database for the purposes established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.

(2) (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a database from the information provided by:

(i) local government entities issuing building permits;

(ii) original contractors;

(iii) subcontractors; and

(iv) other interested persons.

(b) The database shall accommodate filings by third parties on behalf of clients.

(c) The division and the designated agent shall design, develop, and test the database for full implementation on May 1, 2005.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules and develop procedures for:

(a) the division to oversee and enforce this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37;

(b) the designated agent to administer this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37; and

(c) the form of submission of an alternate filing, which may include procedures for rejecting an illegible or incomplete filing.

(4) (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to allow the designated agent to periodically archive projects from the database.

(c) A project shall be archived no earlier than:

(i) one year after the day on which a notice of completion is filed for a project;

(ii) if no notice of completion is filed, two years after the last filing activity for a project; or

(iii) one year after the day on which a filing is cancelled under Subsection 38-1-32[~~(3)~~](6)(c) or 38-1-33(2)(c).

(d) The division may audit the designated agent's administration of the database as often as the division considers necessary.

(5) The designated agent shall carry errors and omissions insurance in the amounts established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the database of information provided in alternate filings.

(b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for alternate filings.

(7) The designated agent is not liable for the correctness of the information contained in an alternate filing it enters into the database.

Section 7. Section 38-1-30.5 is enacted to read:

38-1-30.5. (Codified as 38-1-30. 7) Notice of construction loan.

(1) As used in this section, "construction loan" does not include a consumer loan secured by the equity in the consumer's home.

(2) After recording a mortgage or trust deed securing a construction loan on a private project, the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, file with the database a notice of construction loan.

(3) A notice under Subsection (2) shall accurately state:

(a) the lender's name, address, and telephone number;

(b) the name of the trustor on the trust deed securing the loan;

(c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;

(d) the address of the project property; and

(e) the name of the county in which the project property is located.

(4) A construction lender that files a notice of construction loan containing incomplete or inaccurate information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

Section 8. Section 38-1-31 is amended to read:

38-1-31. Building permit -- Transmission to database -- Posting at project site.

[~~(1) (a) (i) (A) For a construction project where a building permit is issued to an original contractor or owner-builder, no later than 15 days after the issuance of the building permit:~~]

[~~(I) the local government entity issuing that~~]

(1) (a) A county, city, or town issuing a building permit for a private project:

(i) shall, no later than 15 days after issuing the permit, input the building permit application and transmit the building permit information to the database electronically by way of the Internet or computer modem or by any other means; [~~or~~] and

(ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

[~~(II) the original contractor, owner, or owner-builder may file a notice of commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a)(i)(A)(I).~~]

[~~(B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a notice of commencement.~~]

[~~(ii)~~] (b) The person to whom a building permit, filed under Subsection (1)(a)[~~(i)~~], is issued is responsible for the accuracy of the information in the building permit.

[~~(iii)~~] (c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, building permit information transmitted from a [~~local governmental entity~~] county, city, or town to the database shall be classified in the database by the division notwithstanding the [~~local governmental entity's~~] classification of the building permit information by the county, city, or town.

[~~(b) No later than 15 days after commencement of physical construction work at the project site, the original contractor, owner, or owner-builder may file a notice of commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a).~~]

[~~(c) An original contractor, owner, or owner-builder may file a notice of commencement with the designated agent prior to the time frames established in Subsections (1)(a) and (b).~~]

[~~(d) An owner of construction or an original contractor may file a notice of commencement with the designated agent within the time prescribed by Subsections (1)(a) and (b).~~]

[~~(e) (i) If duplicate notices of commencement are filed, they shall be combined into one notice for each project and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.~~]

[~~(ii) A duplicate notice of commencement that is untimely filed relates back under Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.~~]

[~~(iii) Duplicate notices of commencement shall be automatically linked by the designated agent.~~]

[~~(f) The designated agent shall assign each construction project a unique project number that:~~]

[~~(i) identifies each construction project; and~~]

[~~(ii) can be associated with all notices of commencement, preliminary notices, and notices of completion.~~]

[~~(g) A notice of commencement is effective only as to any labor, service, equipment, and material furnished to the construction project that is furnished subsequent to the filing of the notice of commencement.~~]

[~~(2) (a) A notice of commencement shall include the following:~~]

[~~(i) the name and address of the owner of the project;~~]

[~~(ii) the name and address of the:~~]

[~~(A) original contractor; and~~]

[~~(B) surety providing any payment bond for the project, or if none exists, a statement that a payment bond was not required for the work being performed; and~~]

[~~(iii) (A) the project address if the project can be reasonably identified by an address; or~~]

[~~(B) the name and general description of the location of the project if the project cannot be reasonably identified by an address.~~]

[~~(b) A notice of commencement may include:~~]

[~~(i) a general description of the project; or~~]

[~~(ii) the lot or parcel number, and any subdivision, development, or other project name, of the real property upon which the project is to be constructed if the project is subject to mechanics' liens.~~]

[~~(c) A notice of commencement need not include all of the items listed in Subsection (2)(a) if:~~]

[~~(i) a building permit is issued for the project; and~~]

[~~(ii) all items listed in Subsection (2)(a) that are available on the building permit are included in the notice of commencement.~~]

[~~(3) If a notice of commencement for a construction project is not filed within the time set forth in Subsections(1)(a) and (b), the following do not apply:~~]

[~~(a) Section 38-1-32; and~~]

[~~(b) Section 38-1-33.~~]

[~~(4) (a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notice of the filing of a notice of commencement or alternate notice as prescribed in Subsection (1), shall be provided to:~~]

[~~(i) all persons who have filed notices of commencement for the project; and~~]

[~~(ii) all interested persons who have requested notices concerning the project.~~]

[~~(b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:~~]

[~~(A) providing an e-mail address, mailing address, or telefax number to which a notice required by Subsection (4)(a) is to be sent; and~~]

[~~(B) the accuracy of any e-mail address, mailing address, or telefax number to which notice is to be sent.~~]

[~~(ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it sends the notice to the e-mail address, mailing address, or telefax number provided to the designated agent whether or not the notice is actually received.~~]

[~~(5) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice of commencement is filed timely and meets all of the requirements in this section.~~]

[~~(b) A substantial inaccuracy in a notice of commencement renders the notice of commencement unenforceable.~~]

[~~(c) A person filing a notice of commencement by alternate filing is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.~~]

[~~(6)~~] (2) At the time a building permit is obtained, each original contractor shall conspicuously post at the project site a copy of the building permit obtained for the project.

Section 9. Section 38-1-31.5 is enacted to read:

38-1-31.5. Notice of commencement for a government project.

(1) No later than 15 days after commencement of physical construction work at a government project site, the original contractor, owner, or owner-builder shall file a notice of commencement with the database.

(2) An original contractor, owner, or owner-builder on a government project may file a notice of commencement with the designated agent before the commencement of physical construction work on the project property.

(3) (a) If duplicate notices of commencement are filed, they shall be combined into one notice for each government project, and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.

(b) A duplicate notice of commencement that is untimely filed relates back under Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

(c) Duplicate notices of commencement shall be automatically linked by the designated agent.

(4) The designated agent shall assign each government project a unique project number that:

(a) identifies the project; and

(b) can be associated with all notices of commencement, preliminary notices, and notices of completion filed in connection with the project.

(5) A notice of commencement is effective only as to any labor, service, equipment, and material that is furnished after the notice of commencement is filed.

(6) (a) A notice of commencement shall include:

(i) the name, address, and email address of the owner of the project;

(ii) the name, address, and email address of the original contractor;

(iii) the name, address, and email address of the surety providing any payment bond for the project or, if none exists, a statement that a payment bond was not required for the work being performed;

(iv) (A) the project address if the project can be reasonably identified by an address; or

(B) the name and general description of the location of the project, if the project cannot be reasonably identified by an address; and

(v) the government project-identifying information.

(b) A notice of commencement may include a general description of the project.

(7) If a notice of commencement for a government project is not filed within the time set forth in Subsection (1), Sections 38-1-32.5 and 38-1-33 do not apply.

(8) (a) Notwithstanding any other provision of this chapter, a notice of commencement need not be filed for a private project.

(b) A provision of this chapter does not apply to a private project if the provision depends for its effectiveness upon the filing of a notice of commencement.

(9) (a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, the designated agent shall provide electronic notice of the filing of a notice of commencement or alternate filing to:

(i) all persons who have filed notices of commencement for the project; and

(ii) all interested persons who have requested notices concerning the project.

(b) A person to whom notice is required under Subsection (9)(a) is responsible for:

(i) providing an email address, mailing address, or telefax number to which a notice required by Subsection (9)(a) is to be sent; and

(ii) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

(c) The designated agent fulfills the notice requirement of Subsection (9)(a) by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(10) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of

commencement and prove that the notice of commencement is filed timely and meets all of the requirements of this section.

(b) A substantial inaccuracy in a notice of commencement renders the notice of commencement invalid.

(c) A person filing a notice of commencement by alternate filing is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.

Section 10. Section 38-1-32 is amended to read:

38-1-32. Preliminary notice for a private project.

(1) As used in this section:

(a) "Pre-lender claimant" means a person whose lien under this chapter is made subject to a construction lender's mortgage or trust deed, as provided in Subsection 38-1-5(3)(b), by the person's acceptance of payment in full and the person's withdrawal of the person's preliminary notice.

(b) "Refiled preliminary notice" means a preliminary notice that a pre-lender claimant files under Subsection (2)(a)(ii) with the database on a project after withdrawing a preliminary notice that the claimant previously filed for the same project.

[~~(1)~~] (2) (a) (i) [~~Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor~~] A person who, under Section 38-1-3, is entitled to a lien under this chapter with respect to a private project shall file a preliminary notice with the database [~~by the~~] no later [~~of: (A)~~] than 20 days after [~~commencement of its own work or the commencement of~~] the person commences furnishing labor, service, equipment, [~~and~~] or material to [~~a construction~~] the project[~~; or~~].

(ii) A pre-lender claimant who, under Section 38-1-3, is entitled to claim a lien under this chapter for labor, service, equipment, or material the claimant furnishes to a private project after the recording of a construction lender's mortgage or trust deed on the project property shall file a preliminary notice within 20 days after the recording of the mortgage or trust deed.

[~~(B) 20 days after the filing of a notice of commencement if the subcontractor's work commences before the filing of the first notice of commencement.~~]

[~~(ii)~~] (b) [~~A~~] Subject to Subsection (2)(c), a preliminary notice [~~filed within the period described in Subsection (1)(a)(i)~~] is effective as to all labor, service, equipment, and material [~~furnished~~] that the person filing the notice furnishes to the [~~construction~~] private project, including labor, service, equipment, and material [~~provided~~] that the person furnishes to more than one contractor or subcontractor on that same project.

[~~(iii) (A) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project by a party authorized in Section 38-1-31.~~]

[~~(B) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project filed by a party authorized in Section 38-1-31.~~]

[~~(b)~~] (c) [~~If a person files a~~] A preliminary notice filed after the period [~~prescribed by~~] provided in Subsection [~~(1)~~] (2)(a)[~~, the preliminary notice~~]:

(i) becomes effective five days after the day [~~on which~~] the preliminary notice is filed[~~.~~]; and

(ii) is not effective for labor, service, equipment, or material that the person who files the preliminary notice furnishes to the construction project before five days after the preliminary notice is filed.

[~~(c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within the period required by Subsection (1)(a) precludes a person from maintaining any claim for compensation earned for performance of labor or service or supply of materials or equipment furnished to the construction project before the expiration of five days after the late filing of a preliminary notice, except as against the person with whom the person contracted.~~]

(d) (i) (A) [~~If a~~] A person who [~~is required to file a preliminary notice under this chapter~~] fails to file [~~the~~] a preliminary notice[~~, that person~~] as required in this section may not hold a valid lien under this chapter.

(B) A person who files a preliminary notice after the period provided in Subsection (2)(a) may not hold a valid lien under this chapter for labor, service, equipment, or material the person furnishes to the construction project before five days after the preliminary notice is filed.

[~~(B)~~] (ii) A county recorder need not verify that a valid preliminary notice is filed when a person files a notice to hold and claim a lien under Section 38-1-7.

[~~(ii) The content of a~~]

(e) (i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely filed with the database with respect to a private project is considered to be filed at the time of the first preliminary notice filing, as defined in Section 38-1-5.

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for labor, service, equipment, or material the claimant furnished before the recording of the mortgage or trust deed.

(f) If a preliminary notice filed with the database includes the tax parcel identification number of a parcel not previously associated in the database

with a private project, the designated agent shall promptly notify the person who filed the preliminary notice that:

(i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the database with a private project; and

(ii) the likely explanation is that:

(A) the preliminary notice is the first filing for the project; or

(B) the tax parcel identification number is incorrectly stated in the preliminary notice.

(g) A preliminary notice for a private project shall include:

[~~(A) the building permit number for the project, or the number assigned to the project by the designated agent;~~]

[~~(B)~~] (i) the name, address, [~~and~~] telephone number, and email address of the person furnishing the labor, service, equipment, or material for which the preliminary notice is filed;

[~~(C)~~] (ii) the name and address of the person who contracted with the claimant for the furnishing of the labor, service, equipment, or material;

[~~(D)~~] (iii) the name of the record or reputed owner of the project property;

[~~(E)~~] (iv) the name of the original contractor under which the claimant is [~~performing~~] furnishing or will [~~perform its work; and~~] furnish labor, service, equipment, or material;

[~~(F)~~] (v) the address of the project property or a description of the location of the project[~~,~~];

[~~(iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor shall provide the person with the building permit number for the project, or the number assigned to the project by the designated agent.~~]

[~~(e) If a person provides labor, service, equipment, or material before the filing of a notice of commencement and the notice of commencement is filed more than 15 days after the day on which the person providing labor, service, equipment, or material begins work on the project, the person providing labor, service, equipment, or material need not file a preliminary notice to maintain the person's right to hold a lien under this chapter or any other right, including a right referenced under Subsection (1)(c).~~]

(vi) the name of the county in which the project property is located; and

(vii) (A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a previously filed notice of construction loan under Section 38-1-30.5 on the same project;

(C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(D) the entry number of the building permit issued for the project.

(h) A preliminary notice for a private project may include:

(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and

(ii) the lot or parcel number of each lot or parcel that is included in the project property.

[~~(2)~~] (3) (a) [~~(i)~~] Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a preliminary notice or alternate [~~notice as prescribed in Subsection (1),~~] filing shall be provided to:

[~~(A)~~] (i) the person filing the preliminary notice; and

[~~(B) each person that filed a notice of commencement for the project; and~~]

[~~(C) all interested persons who have requested notices~~]

(ii) each person who has requested a notice concerning the project.

[~~(ii)~~] (b) A person to whom notice is required to be provided under Subsection (2)(a)[~~(i)~~] is responsible for:

[~~(A)~~] (i) providing an email address, mailing address, or telefax number to which a notice required by Subsection (2)(a) is to be sent; and

[~~(B)~~] (ii) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

[~~(iii)~~] (c) The designated agent fulfills the notice requirement of Subsection (2)(a)[~~(i) when it sends~~] by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

[~~(b)~~] (4) (a) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(b) Substantial compliance with the requirements of Subsection (2)(g) may be established by a person's reasonable reliance on information in the database provided by a previously filed:

(i) notice of construction loan under Section 38-1-30.5;

(ii) preliminary notice; or

(iii) building permit.

[~~(c)~~] (5) (a) Subject to Subsection [~~(2)(d)~~] (5)(b), a person required by this section to give preliminary

notice is only required to give one notice for each project.

[~~(d)~~] (b) If the labor, service, equipment, or material is furnished pursuant to contracts under more than one original contract, the notice requirements [~~must~~] shall be met with respect to the labor, service, equipment, or material furnished under each original contract.

[~~(3)~~] (6) (a) [~~If a~~] A construction project owner, original contractor, subcontractor, or other interested person who believes that a preliminary notice has been filed erroneously[~~, that owner, original contractor, subcontractor, or other interested person can~~] may request from the person who filed the preliminary notice evidence establishing the validity of the preliminary notice.

(b) Within 10 days after the request described in Subsection [~~(3)~~] (6)(a), the person or entity that filed the preliminary notice shall provide the requesting person or entity proof that the preliminary notice is valid.

(c) If the person or entity that filed the preliminary notice does not provide proof of the validity of the preliminary notice, that person or entity shall immediately cancel the preliminary notice from the database in any manner prescribed by the division pursuant to rule.

[~~(4)~~] (7) A person filing a preliminary notice by alternate filing is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.

[~~(5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.~~]

(8) (a) A person who files a preliminary notice before the recording of a construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with the database a notice of withdrawal as provided in Subsection (8)(b).

(b) A notice of withdrawal shall include:

(i) the information required for a preliminary notice under Subsection (2)(g); and

(ii) the entry number of the preliminary notice being withdrawn.

(9) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

Section 11. Section 38-1-32.5 is enacted to read:

38-1-32.5. Preliminary notice on government project.

(1) Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor on a government project shall file a preliminary notice with the database by the later of:

(a) 20 days after the subcontractor commences the subcontractor's own work or commences furnishing labor, service, equipment, or material to the construction project; and

(b) 20 days after the filing of a notice of commencement, if the subcontractor's work commences before the filing of the first notice of commencement.

(2) A preliminary notice filed within the period described in Subsection (1) is effective as to all labor, service, equipment, and material that the subcontractor furnishes to the construction project, including labor, service, equipment, and material provided that the subcontractor furnishes to more than one contractor or subcontractor.

(3) (a) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project.

(b) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project.

(4) If a person files a preliminary notice after the period prescribed by Subsection (1), the preliminary notice becomes effective five days after the day on which the preliminary notice is filed.

(5) Except as provided in Subsection (8), failure to file a preliminary notice within the period required by Subsection (1) precludes a person from maintaining any claim for compensation earned for labor, service, material, or equipment furnished to the construction project before the expiration of five days after the late filing of a preliminary notice, except as against the person with whom the person contracted.

(6) A preliminary notice on a government project shall include:

(a) the government project-identifying information;

(b) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;

(c) the name and address of the person who contracted with the claimant for the furnishing of the labor, service, equipment, or material;

(d) the name of the record or reputed owner of the project;

(e) the name of the original contractor under which the claimant is performing or will perform its work; and

(f) the address of the project or a description of the location of the project.

(7) Upon request, an original contractor shall provide a subcontractor with the number assigned to the project by the designated agent.

(8) A person who provides labor, service, equipment, or material before the filing of a notice of commencement need not file a preliminary notice to maintain any right the person would otherwise have, if the notice of commencement is filed more than 15 days after the day on which the person begins work on the project.

(9) Subsections 38-1-32(2), (3), (4), (5), and (6) apply to a preliminary notice on a government project under this section to the same extent that those subsections apply to a preliminary notice on a private project under Section 38-1-32.

Section 12. Section 38-1-32.7 is enacted to read:

38-1-32.7. Notice concerning construction loan default.

(1) Within five business days after a notice of default is filed for recording under Section 57-1-24 with respect to a trust deed on the project property securing a construction loan, the construction lender under the loan shall file a notice with the database.

(2) A notice under Subsection (1) shall:

(a) include:

(i) the information required to be included in a notice of construction loan under Subsections 38-1-30.5(3)(a), (b), (c), (d), and (e); and

(ii) the entry number of the notice of construction loan;

(b) state that a notice of default with respect to the construction loan has been recorded; and

(c) state the date that the notice of default was recorded.

Section 13. Section 38-1-33 is amended to read:

38-1-33. Notice of completion.

(1) (a) Upon final completion of a construction project, and in accordance with Section 38-1-40, the following with a construction project registered with the database may file a notice of completion with the database:

(i) an owner of the construction project;

(ii) an original contractor of the construction project;

(iii) a lender that has provided financing for the construction project;

(iv) a surety that has provided bonding for the construction project; or

(v) a title company issuing a title insurance policy on the construction project.

(b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is considered an original contract for the sole purpose of determining:

(i) the subcontractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1); and

(ii) the original contractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1) for that subcontractor's work.

(c) A notice of completion shall include:

[~~(i) the building permit number for the project, or the number assigned to the project by the designated agent;~~]

[~~(ii)~~] (i) the name, address, [~~and~~] telephone number, and email address of the person filing the notice of completion;

[~~(iii) the name of the original contractor for the project;~~]

[~~(iv) the address of the project or a description of the location of the project;~~]

(ii) the name of the county in which the project property is located;

(iii) for a private project:

(A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(C) the entry number of the building permit issued for the project;

(iv) for a government project, the government project-identifying information;

(v) the date on which final completion is alleged to have occurred; and

(vi) the method used to determine final completion.

(d) For purposes of this section, final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of the work.

(e) (i) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a notice of completion or alternate [~~notice as prescribed in Subsection (1)(a),~~] filing shall be provided to:

(A) each person that filed a notice of commencement for the project;

(B) each person that filed preliminary notice for the project; and

(C) all interested persons who have requested notices concerning the project.

(ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:

(A) providing an email address, mailing address, or telefax number to which a notice required by this Subsection (1)(e) is to be sent; and

(B) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

(iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it sends the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(iv) Upon the filing of a notice of completion, the time periods for filing a preliminary [~~notices~~] notice stated in Section [~~38-1-27~~] 38-1-32 or 38-1-32.5 are modified such that all preliminary notices shall be filed subsequent to the notice of completion and within 10 days from the day on which the notice of completion is filed.

(f) A subcontract that is considered an original contract for purposes of this section does not create a requirement for an additional preliminary notice if a preliminary notice has already been given for the labor, service, equipment, and material furnished to the subcontractor who performs substantial work.

(2) (a) If a construction project owner, original contractor, subcontractor, or other interested person believes that a notice of completion has been filed erroneously, that owner, original contractor, subcontractor, or other interested person can request from the person who filed the notice of completion evidence establishing the validity of the notice of completion.

(b) Within 10 days after the request described in Subsection (2)(a), the person who filed the notice of completion shall provide the requesting person proof that the notice of completion is valid.

(c) If the person that filed the notice of completion does not provide proof of the validity of the notice of completion, that person shall immediately cancel the notice of completion from the database in any manner prescribed by the division pursuant to rule.

(3) A person filing a notice of completion by alternate filing is responsible for verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

Section 14. Section 58-56-20 is amended to read:

58-56-20. Standardized building permit content.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt a standardized building permit form by rule.

(2) (a) The standardized building permit form created under Subsection (1) shall include fields for indicating the following information:

(i) the name and address of the owner of [~~or contractor for the~~] each parcel of property on which the project will occur;

(ii) the name and address of the contractor for the project;

[~~(ii)~~] (iii) (A) the address of the project; or

(B) a general description of the project; [~~and~~]

(iv) the county in which the property on which the project will occur is located;

(v) the tax parcel identification number of each parcel of the property; and

[~~(iii)~~] (vi) whether the permit applicant is an original contractor or owner-builder.

(b) The standardized building permit form created under Subsection (1) may include any other information the division considers useful.

(3) (a) A compliance agency shall issue a permit for construction only on a standardized building permit form approved by the division.

(b) A permit for construction issued by a compliance agency under Subsection (3)(a) shall print the standardized building permit number assigned under Section 58-56-19 in the upper right-hand corner of the building permit form in at least 12-point type.

(c) (i) Except as provided in Subsection (3)(c)(ii), a compliance agency may not issue a permit for construction if the information required by Subsection (2)(a) is not completed on the building permit form.

(ii) If a compliance agency does not issue a separate permit for different aspects of the same project, the compliance agency may issue a permit for construction without the information required by Subsection (2)(a)[~~(iii)~~](vi).

(d) A compliance agency may require additional information for the issuance of a permit for construction.

(4) A local regulator issuing a single-family residential building permit application shall include in the application or attach to the building permit the following notice prominently placed in at least 14 point font: "Decisions relative to this application are subject to review by the chief executive officer of the municipal or county entity issuing the single-family residential building permit and appeal under the International Residential Code as adopted by the Legislature."

Section 15. Section 63G-6-506 is amended to read:

63G-6-506. Preliminary notice requirement.

(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section [~~38-1-32~~] 38-1-32.5, except that this section does not apply:

(a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section [~~38-1-31~~] 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) must be provided [~~prior to~~] before commencement of any action on the payment bond.

Section 16. Repealer.

This bill repeals:

Section 38-1-37, Application of Section 38-1-27 and Sections 38-1-30 through 38-1-36.

Section 17. Legislative intent.

It is the intent of the Legislature that:

(1) the changes to the law made by this bill apply only to construction projects that commence on or after August 1, 2011; and

(2) during the 2012 and 2013 interim periods, before the November interim committee meeting each year, the Business and Labor Interim Committee review and evaluate the implementation of this bill, determine whether the provisions of this bill should be modified or repealed, and make a recommendation accordingly to the Legislative Management Committee.

Section 18. Effective date.

This bill takes effect on August 1, 2011.

Section 19. Coordinating H.B. 260 with H.B. 203 -- Technically merging substantive amendments.

If this H.B. 260 and H.B. 203, Codification of State Construction and Fire Codes, both pass, it is the intent of the Legislature that:

(1) the coordination clause in this H.B. 260 supersedes the coordination clause contained in H.B. 203; and

(2) the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(a) modify Subsection 15A-1-209(3)(b), as enacted in H.B. 203, to read:

"(b) The standardized building permit form created under this Subsection (3) shall include fields for indicating the following information:

(i) the name and address of the owner of each parcel of property on which the project will occur;

(ii) the name and address of the contractor for the project;

(iii) (A) the address of the project; or

(B) a general description of the project;

(iv) the county in which the property on which the project will occur is located;

(v) the tax parcel identification number of each parcel of the property; and

(vi) whether the permit applicant is an original contractor or owner-builder."; and

(b) change the citation in Subsection 15A-1-209(3)(f)(ii), as enacted in H.B. 203, from "Subsection (3)(b)(iii)" to "Subsection (3)(b)(vi)."

Section 20. Coordinating H.B. 260 with H.B. 115 -- Technically merging substantive amendments.

If this H.B. 260 and H.B. 115, Mechanics' Lien Amendments, both pass, it is the intent of the Legislature that:

(1) the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(a) modify Subsection 38-1-2(6) to read:

"(6) "Construction service":

(a) means to furnish labor, service, material, or equipment for the purpose and during the process of constructing, altering, or repairing an improvement; and

(b) includes the scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.";

(b) modify Section 38-1-5 to read:

"38-1-5. Relation back and priority of liens.

[~~The liens herein provided for shall relate~~]

(1) As used in this section:

(a) "First preliminary notice filing" means the filing of a preliminary notice that is:

(i) the earliest preliminary notice filed on a private project, as defined in Section 38-1-27;

(ii) filed on or after August 1, 2011;

(iii) not filed on a project that, according to the law in effect before August 1, 2011, commenced before August 1, 2011;

(iv) not canceled under Subsection 38-1-32(6); and

(v) not withdrawn under Subsection 38-1-32(8).

(b) "Project property" means the real property on which an improvement is being constructed or made.

(2) A construction service lien relates back to, and [~~take~~] takes effect as of, the time of the [~~commencement to do work or furnish materials on the ground for the structure or improvement, and shall have~~] first preliminary notice filing.

(3) (a) Subject to Subsection (3)(b), a construction service lien has priority over:

(i) any lien, mortgage, or other encumbrance [~~which may have attached subsequently to the time when the building, improvement or structure was commenced, work begun, or first material furnished on the ground; also over~~] that attaches after the first preliminary notice filing; and

(ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice and which was

unrecorded at the time [~~the building, structure or improvement was commenced, work begun, or first material furnished on the ground~~] of the first preliminary notice filing.

(b) A recorded mortgage or trust deed of a construction lender has priority over each construction service lien of a claimant who files a preliminary notice in accordance with Section 38-1-32 before the mortgage or trust deed is recorded if the claimant:

(i) accepts payment in full for construction service that the claimant furnishes to the project before the mortgage or trust deed is recorded; and

(ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under Subsection 38-1-32(8).";

(c) modify Subsection 38-1-19(1) to read:

"[~~When any~~] (1) If a subcontractor [~~shall have~~] has actually begun to [~~furnish labor or materials~~] perform preconstruction service or furnish construction service for which [~~he~~] the subcontractor is entitled to a lien [~~no~~], a payment to the original contractor [~~shall~~] may not impair or defeat [~~such~~] the lien[~~; and no~~].";

(d) modify Subsection 38-1-27(2)(c) to read:

"(c) provide a central repository for [~~notices of commencement, preliminary notices, and notices of completion filed in connection with all privately owned construction projects as well as all state and local government owned construction projects throughout Utah~~] all notices filed with the database under Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33, or 38-1-40;";

(e) modify Subsection 38-1-32(2) to read:

"[~~(1)~~] (2) (a) (i) [~~Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor~~] A person who, under Section 38-1-3, is entitled to a construction service lien with respect to a private project shall file a preliminary notice with the database [~~by the~~] no later [~~of: (A)~~] than 20 days after [~~commencement of its own work or the commencement of~~] the person commences furnishing [~~labor, service, equipment, and material~~] construction service to [~~a construction~~] the project[~~; or~~].

(ii) A pre-lender claimant who, under Section 38-1-3, is entitled to claim a construction service lien for construction service the claimant furnishes to a private project after the recording of a construction lender's mortgage or trust deed on the project property shall file a preliminary notice within 20 days after the recording of the mortgage or trust deed.

[~~(B) 20 days after the filing of a notice of commencement if the subcontractor's work commences before the filing of the first notice of commencement.~~]

[~~(ii)~~] (b) [~~A~~] Subject to Subsection (2)(c), a preliminary notice [~~filed within the period described in Subsection (1)(a)(i)~~] is effective as to all [~~labor, service, equipment, and material furnished~~] construction service that the person filing the notice furnishes to the [~~construction~~] private project, including [~~labor, service, equipment, and material provided~~] construction service that the person furnishes to more than one contractor or subcontractor on that same project.

[~~(iii) (A) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project by a party authorized in Section 38-1-31.~~]

[~~(B) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project filed by a party authorized in Section 38-1-31.~~]

[~~(b)~~] (c) [~~If a person files a~~] A preliminary notice filed after the period [~~prescribed by~~] provided in Subsection [~~(1)~~] (2)(a)[~~, the preliminary notice~~]:

(i) becomes effective five days after the day [~~on which~~] the preliminary notice is filed[~~.~~]; and

(ii) is not effective for construction service that the person who files the preliminary notice furnishes to the construction project before five days after the preliminary notice is filed.

[~~(c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within the period required by Subsection (1)(a) precludes a person from maintaining any claim for compensation earned for performance of labor or service or supply of materials or equipment furnished to the construction project before the expiration of five days after the late filing of a preliminary notice, except as against the person with whom the person contracted.~~]

(d) (i) (A) [~~If a~~] A person who [~~is required to file a preliminary notice under this chapter~~] fails to file [~~the~~] a preliminary notice[~~, that person~~] as required in this section may not hold a valid construction service lien under this chapter.

(B) A person who files a preliminary notice after the period provided in Subsection (2)(a) may not hold a valid construction service lien for construction service the person furnishes to the construction project before five days after the preliminary notice is filed.

[~~(B)~~] (ii) A county recorder need not verify that a valid preliminary notice is filed when a person files a notice to hold and claim a lien under Section 38-1-7.

[~~(ii) The content of a~~]

(e) (i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely filed with the database with respect to a private project is considered to be filed at the time of the first preliminary notice filing, as defined in Section 38-1-5.

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for construction service the claimant furnished before the recording of the mortgage or trust deed.

(f) If a preliminary notice filed with the database includes the tax parcel identification number of a parcel not previously associated in the database with a private project, the designated agent shall promptly notify the person who filed the preliminary notice that:

(i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the database with a private project; and

(ii) the likely explanation is that:

(A) the preliminary notice is the first filing for the project; or

(B) the tax parcel identification number is incorrectly stated in the preliminary notice.

(g) A preliminary notice for a private project shall include:

[~~(A) the building permit number for the project, or the number assigned to the project by the designated agent;~~]

[~~(B)~~] (i) the name, address, [~~and~~] telephone number, and email address of the person furnishing the [~~labor, service, equipment, or material~~] construction service for which the preliminary notice is filed;

[~~(C)~~] (ii) the name and address of the person who contracted with the claimant for the furnishing of the [~~labor, service, equipment, or material~~] construction service;

[~~(D)~~] (iii) the name of the record or reputed owner of the project property;

[~~(E)~~] (iv) the name of the original contractor for construction service under which the claimant is [~~performing~~] furnishing or will [~~perform its work; and~~] furnish construction service;

[~~(F)~~] (v) the address of the project property or a description of the location of the project[~~.~~];

[~~(iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor shall provide the person with the building permit number for the project, or the number assigned to the project by the designated agent.~~]

[~~(e) If a person provides labor, service, equipment, or material before the filing of a notice of commencement and the notice of commencement is filed more than 15 days after the day on which the person providing labor, service, equipment, or material begins work on the project, the person providing labor, service, equipment, or material need not file a preliminary notice to maintain the person's right to hold a lien under this chapter or any other right, including a right referenced under Subsection (1)(c).~~]

(vi) the name of the county in which the project property is located; and

(vii) (A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a previously filed notice of construction loan under Section 38-1-30.7 on the same project;

(C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(D) the entry number of the building permit issued for the project.

(h) A preliminary notice for a private project may include:

(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and

(ii) the lot or parcel number of each lot or parcel that is included in the project property."; and

(f) modify Subsection 38-1-32(5) to read:

"[~~(c)~~] (5) (a) Subject to Subsection [~~(2)(d)~~] (5)(b), a person required by this section to give preliminary notice is only required to give one notice for each project.

[~~(d)~~] (b) If the [~~labor, service, equipment, or material~~] construction service is furnished pursuant to contracts under more than one original contract for construction service, the notice requirements [~~must~~] shall be met with respect to the [~~labor, service, equipment, or material~~] construction service furnished under each original contract.";

(2) the amendments to Subsection 38-1-27(2)(d) in this H.B. 260 supersede the amendments to Subsection 38-1-27(2)(d) in H.B. 115;

(3) the amendments to Subsection 38-1-27(4)(a) in this H.B. 260 supersede the amendments to Subsection 38-1-27(4)(a) in H.B. 115; and

(4) (a) Section 38-1-30.5, as enacted in this H.B. 260, be renumbered to Section 38-1-30.7; and

(b) all references in this H.B. 260 to Section 38-1-30.5 be changed to Section 38-1-30.7.

CHAPTER 300
H. B. 262
Passed March 2, 2011
Approved March 25, 2011
Effective May 10, 2011

DIVIDED SCHOOL DISTRICT ASSETS AND LIABILITIES

Chief Sponsor: Kenneth W. Sumsion
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions pertaining to the allocation of the assets and liabilities of certain divided school districts.

Highlighted Provisions:

This bill:

- specifies how the assets and liabilities of a divided school district shall be allocated between the new district and the remaining district when a school district is created pursuant to a proposal made by a city or interlocal agreement participants; and
- eliminates provisions requiring disagreements about the allocation of assets and liabilities to be resolved by binding arbitration.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-2-117, as last amended by Laws of Utah 2008, Chapters 92 and 236
53A-2-118.1, as last amended by Laws of Utah 2010, Chapter 230

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

Section 1. Section 53A-2-117 is amended to read:

53A-2-117. Definitions.

As used in Sections 53A-2-117 through 53A-2-121:

(1) "Allocation date" means:

(a) June 30 of the second calendar year after the [~~creation~~] local school board general election date described in Subsection 53A-2-118.1(3)(a)(i); or

(b) another date that the transition teams under Section 53A-1-118.1 mutually agree to.

(2) "Canvass date" means the date of the canvass of an election under Subsection 53A-2-118(5) at which voters approve the creation of a new school district under Section 53A-2-118.1.

(3) "Creation election date" means the date of the election under Subsection 53A-2-118(5) at which voters approve the creation of a new school district under Section 53A-2-118.1.

(4) "Divided school district, "existing district," or "existing school district" means a school district from which a new district is created.

(5) "New district" or "new school district" means a school district created under Section 53A-2-118 or 53A-2-118.1.

(6) "Remaining district" or "remaining school district" means an existing district after the creation of a new district.

Section 2. Section 53A-2-118.1 is amended to read:

53A-2-118.1. Proposal initiated by a city or interlocal agreement participants to create a school district -- Boundaries -- Election of local school board members -- Allocation of assets and liabilities -- Startup costs -- Transfer of title.

(1) (a) After conducting a feasibility study, a city with a population of at least 50,000, as determined by the lieutenant governor using the process described in Subsection 67-1a-2(3), may by majority vote of the legislative body, submit for voter approval a measure to create a new school district with boundaries contiguous with that city's boundaries, in accordance with Section 53A-2-118.

(b) (i) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (1)(a) is within the exclusive discretion of the city's legislative body.

(ii) An inadequacy of a feasibility study under Subsection (1)(a) may not be the basis of a legal action or other challenge to:

(A) an election for voter approval of the creation of a new school district; or

(B) the creation of the new school district.

(2) (a) By majority vote of the legislative body, a city of any class, a town, or a county, may, together with one or more other cities, towns, or the county enter into an interlocal agreement, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, for the purpose of submitting for voter approval a measure to create a new school district.

(b) (i) In accordance with Section 53A-2-118, interlocal agreement participants under Subsection (2)(a) may submit a proposal for voter approval if:

(A) the interlocal agreement participants conduct a feasibility study prior to submitting the proposal to the county;

(B) the combined population within the proposed new school district boundaries is at least 50,000;

(C) the new school district boundaries:

(I) are contiguous;

(II) do not completely surround or otherwise completely geographically isolate a portion of an existing school district that is not part of the proposed new school district from the remaining part of that existing school district, except as provided in Subsection (2)(d)(iii);

(III) include the entire boundaries of each participant city or town, except as provided in Subsection (2)(d)(ii); and

(IV) subject to Subsection (2)(b)(ii), do not cross county lines; and

(D) the combined population within the proposed new school district of interlocal agreement participants that have entered into an interlocal agreement proposing to create a new school district is at least 80% of the total population of the proposed new school district.

(ii) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (2)(b)(i)(A), including whether to conduct a new feasibility study or revise a previous feasibility study due to a change in the proposed new school district boundaries, is within the exclusive discretion of the legislative bodies of the interlocal agreement participants that enter into an interlocal agreement to submit for voter approval a measure to create a new school district.

(iii) An inadequacy of a feasibility study under Subsection (2)(b)(i)(A) may not be the basis of a legal action or other challenge to:

(A) an election for voter approval of the creation of a new school district; or

(B) the creation of the new school district.

(iv) For purposes of determining whether the boundaries of a proposed new school district cross county lines under Subsection (2)(b)(i)(C)(IV):

(A) a municipality located in more than one county and entirely within the boundaries of a single school district is considered to be entirely within the same county as other participants in an interlocal agreement under Subsection (2)(a) if more of the municipality's land area and population is located in that same county than outside the county; and

(B) a municipality located in more than one county that participates in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries on the basis of the exception stated in Subsection (2)(d)(ii)(B) may not be considered to cross county lines.

(c) (i) A county may only participate in an interlocal agreement under this Subsection (2) for the unincorporated areas of the county.

(ii) Boundaries of a new school district created under this section may include:

(A) a portion of one or more existing school districts; and

(B) a portion of the unincorporated area of a county, including a portion of a township.

(d) (i) As used in this Subsection (2)(d):

(A) "Isolated area" means an area that:

(I) is entirely within the boundaries of a municipality that, except for that area, is entirely within a school district different than the school district in which the area is located; and

(II) would, because of the creation of a new school district from the existing district in which the area is located, become completely geographically isolated.

(B) "Municipality's school district" means the school district that includes all of the municipality in which the isolated area is located except the isolated area.

(ii) Notwithstanding Subsection (2)(b)(i)(C)(III), a municipality may be a participant in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries if:

(A) the portion of the municipality proposed to be included in the new school district would, if not included, become an isolated area upon the creation of the new school district; or

(B) (I) the portion of the municipality proposed to be included in the new school district is within the boundaries of the same school district that includes the other interlocal agreement participants; and

(II) the portion of the municipality proposed to be excluded from the new school district is within the boundaries of a school district other than the school district that includes the other interlocal agreement participants.

(iii) (A) Notwithstanding Subsection (2)(b)(i)(C)(II), a proposal to create a new school district may be submitted for voter approval pursuant to an interlocal agreement under Subsection (2)(a), even though the new school district boundaries would create an isolated area, if:

(I) the potential isolated area is contiguous to one or more of the interlocal agreement participants;

(II) the interlocal participants submit a written request to the municipality in which the potential isolated area is located, requesting the municipality to enter into an interlocal agreement under Subsection (2)(a) that proposes to submit for voter approval a measure to create a new school district that includes the potential isolated area; and

(III) 90 days after a request under Subsection (2)(d)(iii)(A)(II) is submitted, the municipality has not entered into an interlocal agreement as requested in the request.

(B) Each municipality receiving a request under Subsection (2)(d)(iii)(A)(II) shall hold one or more public hearings to allow input from the public and affected school districts regarding whether or not the municipality should enter into an interlocal agreement with respect to the potential isolated area.

(C) (I) This Subsection (2)(d)(iii)(C) applies if:

(Aa) a new school district is created under this section after a measure is submitted to voters based on the authority of Subsection (2)(d)(iii)(A); and

(Bb) the creation of the new school district results in an isolated area.

(II) The isolated area shall, on July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i), become part of the municipality's school district.

(III) Unless the isolated area is the only remaining part of the existing district, the process described in Subsection (4) shall be modified to:

(Aa) include a third transition team, appointed by the local school [~~district~~] board of the municipality's school district, to represent that school district; and

(Bb) require allocation of the existing district's [~~property~~] assets and liabilities among the new district, the remaining district, and the municipality's school district[~~;~~].

[~~(Cc) require each of the three transition teams to appoint one member to the three-member arbitration panel, if an arbitration panel is established; and~~]

[~~(Dd) require the municipality's school district to bear 1/3 of the costs of arbitration.~~]

(IV) The existing district shall continue to provide educational services to the isolated area until July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i).

(3) (a) If a proposal under this section is approved by voters:

(i) an election shall be held at the next regular general election to elect:

(A) members to the local school board of the existing school district whose terms are expiring;

(B) all members to the local school board of the new school district; and

(C) all members to the local school board of the remaining district;

(ii) the assets and liabilities of the existing school district [~~property~~] shall be divided between the [~~existing~~] remaining school district and the new school district as provided in Subsection [~~(4)~~] (5) and Section 53A-2-121;

(iii) transferred employees shall be treated in accordance with Sections 53A-2-116 and 53A-2-122;

(iv) (A) an individual residing within the boundaries of a new school district at the time the new school district is created may, for six school years after the creation of the new school district, elect to enroll in a secondary school located outside the boundaries of the new school district if:

(I) the individual resides within the boundaries of that secondary school as of the day before the new school district is created; and

(II) the individual would have been eligible to enroll in that secondary school had the new school district not been created; and

(B) the school district in which the secondary school is located shall provide educational services, including, if provided before the creation of the new school district, busing, to each individual making an election under Subsection (3)(a)(iv)(A) for each school year for which the individual makes the election; and

(v) within one year after the new district begins providing educational services, the superintendent of each remaining district affected and the superintendent of the new district shall meet, together with the Superintendent of Public Instruction, to determine if further boundary changes should be proposed in accordance with Section 53A-2-104.

(b) (i) The terms of the initial members of the local school [~~district~~] board of the new district and remaining district shall be staggered and adjusted by the county legislative body so that approximately half of the local school board is elected every two years.

(ii) The term of a member of the existing local school board, including a member elected under Subsection (3)(a)(i)(A), terminates on July 1 of the second year after the local school board general election date described in Subsection (3)(a)(i), regardless of when the term would otherwise have terminated.

(iii) Notwithstanding the existence of a local school board for the new district and a local school board for the remaining district under Subsection (3)(a)(i), the local school board of the existing district shall continue, until the time specified in Subsection 53A-2-118(5)(b)(ii)(A), to function and exercise authority as a local school board to the extent necessary to continue to provide educational services to the entire existing district.

(iv) A person may simultaneously serve as or be elected to be a member of the local school board of an existing district and a member of the local school board of:

(A) a new district; or

(B) a remaining district.

(4) (a) Within 45 days after the canvass date for the election at which voters approve the creation of a new district:

(i) a transition team to represent the remaining district shall be appointed by the members of the existing [~~district~~] local school board who reside within the area of the remaining district, in consultation with:

(A) the legislative bodies of all municipalities in the area of the remaining district; and

(B) the legislative body of the county in which the remaining district is located, if the remaining district includes one or more unincorporated areas of the county; and

(ii) another transition team to represent the new district shall be appointed by:

(A) for a new district located entirely within the boundaries of a single city, the legislative body of that city; or

(B) for each other new district, the legislative bodies of all interlocal agreement participants.

(b) The local school [~~district~~] board of the existing school district shall, within 60 days after the canvass date for the election at which voters approve the creation of a new district:

(i) prepare an inventory of the existing district's:

(A) [~~property~~] assets, both tangible and intangible, real and personal; and

(B) liabilities; and

(ii) deliver a copy of the inventory to each of the transition teams.

(c) [~~(i) (A)~~] The transition teams appointed under Subsection (4)(a) shall[~~, subject to Subsection (4)(e)(iii)~~]:

[~~(I)~~] (i) determine the allocation of the existing district's [~~property~~] assets and, except for indebtedness under Section 53A-2-121, liabilities between the remaining district and the new district in accordance with Subsection [~~(4)(e)(ii)~~] (5);

[~~(II)~~] (ii) prepare a written report detailing how the existing district's [~~property~~] assets and, except for indebtedness under Section 53A-2-121, liabilities are to be allocated[~~, including:~~]; and

[~~(Aa) a designation of the property that should be transferred to the new district;~~]

[~~(Bb) a designation of any property that should be shared between the remaining district and the new district; and~~]

[~~(Cc) a designation of any property that will need to be allocated by arbitration under Subsection (4)(d); and~~]

[~~(III)~~] (iii) deliver a copy of the written report to:

[~~(Aa)~~] (A) the local school [~~district~~] board of the existing district;

[~~(Bb)~~] (B) the local school [~~district~~] board of the remaining district; and

[~~(Cc)~~] (C) the local school [~~district~~] board of the new district.

[~~(B)~~] (d) The transition teams shall determine the allocation under Subsection (4)(c)(i)[~~(A)(I)~~] and deliver the report required under Subsection (4)(c)[~~(i)(A)(II)~~](ii) before August 1 of the year following the election at which voters approve the creation of a new district, unless that deadline is extended by the mutual agreement of:

[~~(I)~~] (i) the local school [~~district~~] board of the existing district; and

[~~(II) (Aa)~~] (ii) (A) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or

[~~(Bb)~~] (B) the legislative bodies of all interlocal agreement participants, for each other new district.

[~~(ii) Subject to Subsection (4)(e)(iii), all property, assets, and liabilities that the existing district owns on the allocation date, both tangible and intangible, real and personal, shall be allocated between the remaining district and the new district in a way that is fair and equitable to both the remaining district and the new district, taking into account:~~]

[~~(A) the relative student populations between the remaining district and new district;~~]

[~~(B) the relative assessed value of taxable property between the remaining district and the new district;~~]

[~~(C) the historical amount of property used to deliver educational services to students in the remaining district and the new district;~~]

[~~(D) any money made available for the use of the new district under Subsection (5); and~~]

[~~(E) any other factors that the transition teams consider relevant in dividing the property in a fair and equitable manner.~~]

[~~(iii) (A) The transition teams shall allocate each school building and associated property used primarily to provide educational services to local residents and not serving district-wide purposes to the school district that would best serve the existing student population of that school building and associated property.~~]

[~~(B) Except as provided in Subsection (4)(e)(iii)(A), nothing in this Subsection (4)(c) may be construed to limit the ability of the transition teams to:~~]

[~~(I) provide that an existing district's property be shared by a remaining district and new district;~~]

[~~(II) determine, by mutual agreement, that the value of the school buildings and associated property described in Subsection (4)(e)(iii)(A) may be excluded from consideration in the property allocation process under this Subsection (4)(e); or~~]

[~~(III) provide for any other arrangement with respect to existing district property that is beneficial to and in the best interests of the remaining district and new district.~~]

[~~(d) (i) Each disagreement between the transition teams about the proper allocation of property between the districts shall be resolved by binding arbitration to a three-member arbitration panel.~~]

[~~(ii) Each transition team shall, no later than September 1 of the year after the creation election date, appoint one qualified, independent arbitrator to an arbitration panel under this Subsection (4)(d), and those two arbitrators shall, within 15 days after their appointment, appoint a third qualified, independent arbitrator.~~]

[~~(iii) In the process of resolving a dispute between the transition teams, the arbitration panel may engage the services of one or more professionals to provide technical advice to the panel.~~]

[~~(iv) The costs of arbitration shall initially be borne entirely by the existing district, but the new district shall reimburse the existing district half of those costs within one year after the new district begins providing educational services.~~]

[~~(e) Each decision of the transition teams and of the arbitration panel resolving a disagreement between the transition teams is final and binding on the boards of the existing district, remaining district, and new district.~~]

[~~(f)~~] (e) (i) All costs and expenses of the transition team that represents a remaining district shall be borne by the remaining district.

(ii) All costs and expenses of the transition team that represents a new district shall initially be borne by:

(A) the city whose legislative body appoints the transition team, if the transition team is appointed by the legislative body of a single city; or

(B) the interlocal agreement participants, if the transition team is appointed by the legislative bodies of interlocal agreement participants.

(iii) The new district may, to a maximum of $500,000, reimburse the city or interlocal agreement participants for:

(A) transition team costs and expenses; and

(B) startup costs and expenses incurred by the city or interlocal agreement participants on behalf of the new district.

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

(i) "Associated property" means furniture, equipment, or supplies located in or specifically associated with a physical asset.

(ii) (A) "Discretionary asset or liability" means, except as provided in Subsection (5)(a)(ii)(B), an asset or liability that is not tied to a specific project, school, student, or employee by law or school district accounting practice.

(B) "Discretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.

(iii) (A) "Nondiscretionary asset or liability" means, except as provided in Subsection (5)(a)(iii)(B), an asset or liability that is tied to a specific project, school, student, or employee by law or school district accounting practice.

(B) "Nondiscretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.

(iv) "Physical asset" means a building, land, or water right together with revenue derived from the lease or use of the building, land, or water right.

(b) Except as provided in Subsection (5)(c), the transition teams appointed under Subsection (4)(a) shall allocate all assets and liabilities the existing district owns on the allocation date, both tangible and intangible, real and personal, to the new district and remaining district as follows:

(i) a physical asset and associated property shall be allocated to the school district in which the physical asset is located;

(ii) a discretionary asset or liability shall be allocated between the new district and remaining district in proportion to the student populations of the school districts;

(iii) a nondiscretionary asset shall be allocated to the school district where the project, school, student, or employee to which the nondiscretionary asset is tied will be located;

(iv) vehicles used for pupil transportation shall be allocated:

(A) according to the transportation needs of schools, as measured by the number and assortment of vehicles used to serve transportation routes serving schools within the new district and remaining district; and

(B) in a manner that gives each school district a fleet of vehicles for pupil transportation that is equivalent in terms of age, condition, and variety of carrying capacities; and

(v) other vehicles shall be allocated:

(A) in proportion to the student populations of the school districts; and

(B) in a manner that gives each district a fleet of vehicles that is similar in terms of age, condition, and carrying capacities.

(c) By mutual agreement, the transition teams may allocate an asset or liability in a manner different than the allocation method specified in Subsection (5)(b).

[~~(5)~~] (6) (a) As used in this Subsection [~~(5)~~] (6):

(i) "New district startup costs" means:

(A) costs and expenses incurred by a new district in order to prepare to begin providing educational services on July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i); and

(B) the costs and expenses of the transition team that represents the new district.

(ii) "Remaining district startup costs" means:

(A) costs and expenses incurred by a remaining district in order to:

(I) make necessary adjustments to deal with the impacts resulting from the creation of the new district; and

(II) prepare to provide educational services within the remaining district once the new district begins providing educational services within the new district; and

(B) the costs and expenses of the transition team that represents the remaining district.

(b) (i) By January 1 of the year following the local school board general election date described in Subsection (3)(a)(i), the existing district shall make half of the undistributed reserve from its General

Fund, to a maximum of $9,000,000, available for the use of the remaining district and the new district, as provided in this Subsection [~~(5)~~] (6).

(ii) The existing district may make additional funds available for the use of the remaining district and the new district beyond the amount specified in Subsection [~~(5)~~] (6)(b)(i) through an interlocal agreement.

(c) The existing district shall make the money under Subsection [~~(5)~~] (6)(b) available to the remaining district and the new district proportionately based on student population.

(d) The money made available under Subsection [~~(5)~~] (6)(b) may be accessed and spent by:

(i) for the remaining district, the local school [~~district~~] board of the remaining district; and

(ii) for the new district, the local school [~~district~~] board of the new district.

(e) (i) The remaining district may use its portion of the money made available under Subsection [~~(5)~~] (6)(b) to pay for remaining district startup costs.

(ii) The new district may use its portion of the money made available under Subsection [~~(5)~~] (6)(b) to pay for new district startup costs.

[~~(6)~~] (7) (a) The existing district shall transfer title or, if applicable, partial title of property to the new school district in accordance with the allocation of property by[~~: (i)~~] the transition teams, as stated in the report under Subsection (4)(c)[~~(i)(A)(II); and~~](ii).

[~~(ii) the arbitration panel, if applicable.~~]

(b) The existing district shall complete each transfer of title or, if applicable, partial title to real property and vehicles by July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i), except as that date is changed by the mutual agreement of:

(i) the local school [~~district~~] board of the existing district;

(ii) the local school [~~district~~] board of the remaining district; and

(iii) the local school [~~district~~] board of the new district.

(c) The existing district shall complete the transfer of all property not included in Subsection [~~(6)~~] (7)(b) by November 1 of the second calendar year after the local school board general election date described in Subsection (3)(a)(i).

[~~(7)~~] (8) Except as provided in Subsections [~~(5)~~] (6) and [~~(6)~~] (7), after the creation election date an existing school district may not transfer or agree to transfer title to district property without the prior consent of:

(a) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or

(b) the legislative bodies of all interlocal agreement participants, for each other new district.

[~~(8) This section applies to and governs all actions and proceedings relating to and following the creation of a new district, whether the election under Subsection 53A-2-118(5) on the proposal to create a new school district occurs before or after May 5, 2008, including:~~]

[~~(a) the election of school district board members; and~~]

[~~(b) transition team duties and responsibilities, whether the transition team is appointed before or after May 5, 2008.~~]

(9) This section does not apply to the creation of a new district initiated through a citizens' initiative petition or at the request of a local school board under Section 53A-2-118.

CHAPTER 301
H. B. 288
Passed March 9, 2011
Approved March 25, 2011
Effective May 10, 2011

CONCURRENT ENROLLMENT TRANSCRIPTS

Chief Sponsor: Ronda Rudd Menlove
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill requires the State Board of Regents to report concurrent enrollment information to requesting public institutions of higher education.

Highlighted Provisions:

This bill:

- requires the State Board of Regents and the State Board of Education to coordinate advising to prospective and current high school students participating in concurrent enrollment; and
- requires the Board of Regents to provide certain information to requesting institutions of higher education to facilitate advising for concurrent enrollment.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-15-101, as last amended by Laws of Utah 2009, Chapter 321
53B-1-109, as enacted by Laws of Utah 2006, Chapter 147

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

Section 1. Section 53A-15-101 is amended to read:

53A-15-101. Higher education courses in the public schools -- Cooperation between public and higher education.

(1) The State Board of Education in collaboration with the State Board of Regents shall implement:

(a) a curriculum program and delivery system which allows students the option to complete high school graduation requirements and prepares them to meet college admission requirements at the conclusion of the eleventh grade, but does not preclude a student involved in accelerated learning programs from graduating at an earlier time;

(b) a program of selected college credit courses in general and career and technical education which would be made available in cooperation with the State Board of Regents, as resources allow, through concurrent enrollment with one or more of the state's institutions of higher education;

(c) a course of study for a student who decides to continue on through the twelfth grade that would allow the student to take courses necessary to graduate from high school, and at the student's option, to become better prepared for the world of work, or complete selected college level courses corresponding to the first and second year of course work at a university, college, or community college in the state system of higher education; and

(d) a program for advanced placement which permits students to earn high school credits while qualifying to take advanced placement examinations for college credit.

(2) The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

(3) The State Board of Regents shall adopt rules to ensure the following:

(a) early high school graduates who are academically prepared and meet college admission requirements may be enrolled in one of the state's institutions of higher education;

(b) college credit courses are taught in high school concurrent enrollment or advanced placement programs by college or university faculty or public school educators under the following conditions:

(i) to ensure that students are prepared for college level work, an appropriate assessment is given:

(A) prior to participation in mathematics and English courses; and

(B) in meeting prerequisites previously established for the same campus-based course by the sponsoring institution;

(ii) public school educators in concurrent enrollment programs must first be approved as adjunct faculty and supervised by a state institution of higher education;

(iii) teaching is done through live classroom instruction or telecommunications;

(iv) collaboration among institutions to provide opportunities for general education and high demand career and technical education concurrent enrollment courses to be offered statewide, including via technology;

(v) course content, procedures, and teaching materials in concurrent enrollment programs are approved by the appropriate department or program at an institution of higher education in order to ensure quality and comparability with courses offered on college and university campuses;

(vi) concurrent enrollment may not include high school courses that are typically offered in grades 9 or 10, except as provided under Subsection (3)(c); and

(vii) the provisions under Subsection (3)(b)(vi) do not apply to an early college high school; and

(c) college credits obtained under this section shall be accepted for transfer of credit purposes as if they had been obtained at any public institution of higher education within the state system.

(4) College-level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward graduation on the same basis as courses taught at an institution of higher education to which the credits are submitted.

(5) The State Board of Education shall provide students in the public schools with the option of accelerating their educational program and graduating at the conclusion of the eleventh grade.

(6) (a) The State Board of Education and State Board of Regents shall work in close cooperation in developing, implementing, and evaluating the program established under this section, including working together to effectively advise high school students on registering for concurrent enrollment courses, as described in Section 53B-1-109.

(b) (i) Each high school shall receive its proportional share of concurrent enrollment money appropriated or allocated pursuant to Section 53A-17a-120.5 based upon the hours of higher education course work undertaken by students at the school under Subsections (1)(b) and (1)(c) as compared to the state total.

(ii) School districts shall contract with institutions of higher education to provide the higher education services required under this section.

(iii) (A) Higher education tuition and fees may not be charged for participation in this program, except that each institution within the state's higher education system may charge a one-time per student per institution admissions application fee for concurrent enrollment course credit offered by the institution.

(B) Payment of the fee under Subsection (6)(b)(iii)(A) satisfies the general admissions application fee requirement for a full-time or part-time student at an institution so that no additional admissions application fee may be charged by the institution.

Section 2. Section 53B-1-109 is amended to read:

53B-1-109. Coordination of higher education and public education information technology systems -- Use of unique student identifier -- Coordination of concurrent enrollment advising.

(1) As used in this section, "unique student identifier" has the same meaning as provided in Section 53A-1-603.5.

(2) The State Board of Regents and State Board of Education shall coordinate public education and higher education information technology systems to allow individual student academic achievement to be tracked through both education systems in accordance with this section and Section 53A-1-603.5.

(3) Information technology systems utilized at an institution within the state system of higher education shall utilize the unique student identifier of all students who have previously been assigned a unique student identifier.

(4) (a) The State Board of Regents and the State Board of Education shall coordinate advising to a prospective or current high school student who participates in the concurrent enrollment program established in 53A-15-101.

(b) Advising shall include information on general education requirements at higher education institutions and how the student can efficiently choose concurrent enrollment courses to avoid duplication or excess credit hours.

(5) (a) Eight weeks after the end of each semester, the State Board of Regents shall make available, to a requesting higher education institution in the state system of higher education that participates in concurrent enrollment, a report listing each public high school student who was enrolled in a concurrent enrollment course and admitted to the requesting higher education institution, including:

(i) the student's name and unique student identifier;

(ii) the student's:

(A) school district and school; or

(B) charter school;

(iii) the course name of each concurrent enrollment course taken by the student;

(iv) the higher education institution where the student enrolled to take each concurrent enrollment course; and

(v) (A) all the credits the student earned in each concurrent enrollment course; and

(B) a designation that indicates which credits listed in Subsection (5)(a)(v) the student earned at a grade "C" or higher.

(b) The board shall report the information described in Subsection (5)(a) for every concurrent enrollment course taken by a student in any year.

CHAPTER 302
H. B. 317
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011

CURRENCY AMENDMENTS

Chief Sponsor: Brad J. Galvez
Senate Sponsor: Scott K. Jenkins
Cosponsors: Johnny Anderson
Roger E. Barrus
Bradley M. Daw
John Dougall
Gage Froerer
Keith Grover
Gregory H. Hughes
Ken Ivory
Michael T. Morley
Michael E. Noel
Curtis Oda
Patrick Painter
Lee B. Perry
Jeremy A. Peterson
Holly J. Richardson
Stephen E. Sandstrom
Ryan D. Wilcox
Carl Wimmer
Bill Wright

LONG TITLE

General Description:

This bill recognizes gold and silver coins that are issued by the federal government as legal tender in the state and exempts the exchange of the coins from certain types of state tax liability.

Highlighted Provisions:

This bill:

- provides definitions;
- recognizes gold and silver coins issued by the federal government to be legal tender in the state;
- does not compel a person to tender or accept gold and silver coin;
- provides that the exchange of gold and silver coins for another form of legal tender does not create any individual income or sales tax liability;
- requires the Revenue and Taxation Interim Committee to:
  - study the possibility of establishing an alternative form of legal tender;
  - recommend whether an alternative form of legal tender should be established; and
  - prepare any recommended legislation for the 2012 General Session; and
- enacts an uncodified severability clause.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-10-1002.2, as renumbered and amended by Laws of Utah 2008, Chapter 389

ENACTS:

59-1-1501, Utah Code Annotated 1953
59-1-1502, Utah Code Annotated 1953
59-1-1503, Utah Code Annotated 1953
59-1-1504, Utah Code Annotated 1953
59-10-1025, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 59-1-1501 is enacted to read:

Part 15. Legal Tender Act

59-1-1501. Title.

This part is known as the "Legal Tender Act."

Section 2. Section 59-1-1502 is enacted to read:

59-1-1502. Gold and silver coin.

(1) Gold and silver coin issued by the federal government is legal tender in the state.

(2) A person may not compel any other person to tender or accept gold and silver coin that is issued by the federal government.

Section 3. Section 59-1-1503 is enacted to read:

59-1-1503. Nonrefundable credit -- Sales tax exemption.

(1) There is a nonrefundable credit established for any capital gains incurred from the exchange of gold and silver coin issued by the federal government for another form of legal tender as provided in Section 59-10-1025.

(2) The exchange of gold and silver coin issued by the federal government for another form of legal tender is exempt from sales and use taxes as provided in Subsection 59-12-104(50).

Section 4. Section 59-1-1504 is enacted to read:

59-1-1504. Revenue and Taxation Interim Committee study.

The Revenue and Taxation Interim Committee shall during the 2011 interim:

(1) study the possibility of establishing an alternative form of legal tender for the payment of debts, public charges, taxes, and dues within the state;

(2) recommend whether legislation should be drafted to establish an alternative form of legal tender; and

(3) prepare any legislation that the Revenue and Taxation Interim Committee recommends in accordance with Subsection (2) for consideration by the Legislature during the 2012 General Session.

Section 5. Section 59-10-1002.2 is amended to read:

59-10-1002.2. Apportionment of tax credits.

(1) A nonresident individual or a part-year resident individual that claims a tax credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022, 59-10-1023, [~~or~~] 59-10-1024, or 59-10-1025 may only claim an apportioned amount of the tax credit equal to:

(a) for a nonresident individual, the product of:

(i) the state income tax percentage for the nonresident individual; and

(ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section; or

(b) for a part-year resident individual, the product of:

(i) the state income tax percentage for the part-year resident individual; and

(ii) the amount of the tax credit that the part-year resident individual would have been allowed to claim but for the apportionment requirements of this section.

(2) A nonresident estate or trust that claims a tax credit in accordance with Section 59-10-1017, 59-10-1020, 59-10-1022, [~~or~~] 59-10-1024, or 59-10-1025 may only claim an apportioned amount of the tax credit equal to the product of:

(a) the state income tax percentage for the nonresident estate or trust; and

(b) the amount of the tax credit that the nonresident estate or trust would have been allowed to claim but for the apportionment requirements of this section.

Section 6. Section 59-10-1025 is enacted to read:

59-10-1025. (Codified as 59-10-1028) Nonrefundable tax credit for capital gain transactions on the exchange of gold and silver coin for another form of legal tender.

(1) As used in this section:

(a) "Capital gain transaction" means a transaction that results in a:

(i) short-term capital gain; or

(ii) long-term capital gain.

(b) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(c) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the product of:

(a) to the extent a capital gain is not offset by a capital loss under Chapter 1, Subchapter P, Capital Gains and Losses, Internal Revenue Code, the total amount of the claimant's, estate's, or trust's short-term capital gain or long-term capital gain on a capital gain transaction from an exchange made on or after January 1, 2012, of gold or silver coin issued by the federal government for another form of legal tender; and

(b) 5%.

(3) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to implement this section.

Section 7. Severability clause.

If any section of this bill or the application of any section of this bill to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this bill shall be given effect without the invalid section or application. The provisions of this bill are severable.

CHAPTER 303
H. B. 330
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011

BUDGETARY PROCEDURE AMENDMENTS

Chief Sponsor: Melvin R. Brown
Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill addresses budgetary procedures and certain state funds and accounts.

Highlighted Provisions:

This bill:

- repeals provisions related to nonlapsing funds, accounts, and account balances;
- addresses the funding sources for certain funds and accounts;
- renames certain funds;
- provides that certain funds are nonlapsing;
- converts certain nonlapsing accounts to dedicated credits;
- addresses the amounts the Division of Finance shall deposit into certain funds and accounts;
- repeals obsolete language, funds, and accounts; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-2-8.5, as last amended by Laws of Utah 2008, Chapter 382
4-2-8.7, as last amended by Laws of Utah 2010, Chapters 278 and 378
4-20-2, as last amended by Laws of Utah 2010, Chapter 278
9-4-1501, as enacted by Laws of Utah 2010, Chapter 194
9-4-1502, as enacted by Laws of Utah 2010, Chapter 194
9-4-1503, as enacted by Laws of Utah 2010, Chapter 194
9-10-108, as last amended by Laws of Utah 2004, Chapter 13
9-11-104, as last amended by Laws of Utah 2010, Chapter 156
9-17-102, as enacted by Laws of Utah 2010, Chapter 166
19-1-403, as last amended by Laws of Utah 2009, Chapter 183
26-8a-207, as last amended by Laws of Utah 2010, Chapter 161
26-21a-302, as enacted by Laws of Utah 2010, Chapter 369
31A-38-104, as last amended by Laws of Utah 2005, Chapter 221
35A-4-506, as last amended by Laws of Utah 2010, Chapters 277 and 278
41-22-19.5, as last amended by Laws of Utah 2008, Chapters 216 and 382
51-9-409, as last amended by Laws of Utah 2009, Chapter 32
53-1-118, as enacted by Laws of Utah 2008, Chapter 48
53-7-204.2, as last amended by Laws of Utah 2009, Chapter 183
53A-1-304, as enacted by Laws of Utah 2010, Chapter 139
53A-21-401, as last amended by Laws of Utah 2010, Chapter 162
53A-24-105, as last amended by Laws of Utah 1996, Chapter 37
53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262
58-31b-103, as last amended by Laws of Utah 2010, Chapter 278
58-44a-103, as last amended by Laws of Utah 2010, Chapter 278
58-63-103, as enacted by Laws of Utah 2003, Chapter 308
58-76-103, as last amended by Laws of Utah 2010, Chapter 278
59-10-1314, as enacted by Laws of Utah 2010, Chapter 194
59-12-103, as last amended by Laws of Utah 2010, Chapter 412
59-12-120, as last amended by Laws of Utah 1999, Chapter 195
61-2-204, as renumbered and amended by Laws of Utah 2010, Chapter 379
62A-1-119, as enacted by Laws of Utah 2009, Chapter 359
62A-15-103, as last amended by Laws of Utah 2009, Chapter 75
63A-4-201, as renumbered and amended by Laws of Utah 1993, Chapter 212
63A-5-211, as last amended by Laws of Utah 2000, Chapter 231
63A-11-203, as last amended by Laws of Utah 2006, Chapter 76
63C-4-103, as last amended by Laws of Utah 2010, Chapter 262
63I-2-253, as last amended by Laws of Utah 2010, Chapter 11
63J-1-312, as renumbered and amended by Laws of Utah 2009, Chapter 183
63J-1-313, as renumbered and amended by Laws of Utah 2009, Chapter 183
63J-1-314, as last amended by Laws of Utah 2009, Chapter 389 and renumbered and amended by Laws of Utah 2009, Chapter 183
63J-1-602.1, as enacted by Laws of Utah 2010, Chapter 265
63J-1-602.2, as enacted by Laws of Utah 2010, Chapter 265 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 265
63J-1-602.3, as enacted by Laws of Utah 2010, Chapter 265
63J-1-602.4, as enacted by Laws of Utah 2010, Chapter 265
63J-1-602.5, as enacted by Laws of Utah 2010, Chapter 265

63M-1-905, as last amended by Laws of Utah 2010, Chapters 245 and 278
63M-1-1406, as last amended by Laws of Utah 2009, Chapter 394
63M-1-2003, as renumbered and amended by Laws of Utah 2008, Chapter 382
63M-1-2303, as last amended by Laws of Utah 2010, Chapter 278
65A-5-1, as last amended by Laws of Utah 1995, Chapter 267
72-2-117, as last amended by Laws of Utah 2008, Chapter 382
72-2-117.5, as last amended by Laws of Utah 2010, Chapter 263
72-2-120, as last amended by Laws of Utah 2010, Chapter 278
72-2-122, as last amended by Laws of Utah 2008, Chapter 382
72-3-109, as last amended by Laws of Utah 2008, Chapter 382
73-28-404, as last amended by Laws of Utah 2009, Chapter 183
77-32-601, as last amended by Laws of Utah 2007, Chapter 275
77-32-701, as last amended by Laws of Utah 2002, Chapter 256
79-3-401, as renumbered and amended by Laws of Utah 2009, Chapter 344

REPEALS:
9-8-604, as enacted by Laws of Utah 1991, Chapter 30
63M-1-2305, as last amended by Laws of Utah 2010, Chapter 278

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

Section 1. Section 4-2-8.5 is amended to read:

4-2-8.5. Salinity Offset Fund.

(1) As used in this section, "Colorado River Salinity Offset Program" means a program, administered by the Division of Water Quality, allowing oil, gas, or mining companies and other entities to provide funds to finance salinity reduction projects in the Colorado River Basin by purchasing salinity credits as offsets against discharges made by the company under permits issued by the Division of Water Quality.

(2) (a) There is created a restricted special revenue fund known as the "Salinity Offset Fund."

(b) The fund shall consist of:

(i) monies received from the Division of Water Quality that have been collected as part of the Colorado River Salinity Offset Program;

(ii) grants from local governments, the state, or the federal government;

(iii) grants from private entities; and

(iv) interest on fund monies.

[~~(3) Any unallocated balance in the fund at the end of a fiscal year is nonlapsing.~~]

[~~(4)~~] (3) (a) The department shall:

(i) subject to the rules established under Subsection [~~(4)~~] (3)(a)(ii), distribute fund monies to farmers, ranchers, mutual irrigation companies, and other entities in the state to assist in financing irrigation, rangeland, and watershed improvement projects that will, in accordance with the Colorado River Salinity Offset Program, reduce salinity in the Colorado River; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:

(A) a project funding application process;

(B) project funding requirements;

(C) project approval criteria; and

(D) standards for evaluating the effectiveness of funded projects in reducing salinity in the Colorado River.

(b) The department may require entities seeking fund monies to provide matching funds.

(c) The department shall submit to the Water Quality Board's executive secretary proposed funding projects for the executive secretary's review and approval.

[~~(5)~~] (4) The department may use fund monies for the administration of the fund, but this amount may not exceed 10% of the annual receipts to the fund.

Section 2. Section 4-2-8.7 is amended to read:

4-2-8.7. Invasive Species Mitigation Account created.

(1) As used in this section, "project" means an undertaking that prevents catastrophic wildland fire through land restoration in a watershed that:

(a) is impacted by cheatgrass or other invasive species; or

(b) has a fuel load that may contribute to a catastrophic wildland fire.

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

(b) The restricted account shall consist of:

(i) money appropriated by the Legislature;

(ii) grants from the federal government; and

(iii) grants or donations from a person.

[~~(3) Any unallocated balance in the restricted account at the end of the year is nonlapsing.~~]

[~~(4)~~] (3) (a) After consulting with the Department of Natural Resources and the Conservation Commission, the department may expend money in the restricted account:

(i) on a project implemented by:

(A) the department; or

(B) the Conservation Commission; or

(ii) by giving a grant for a project to:

(A) a state agency;

(B) a federal agency; or

(C) a federal, state, tribal, or private landowner.

(b) A grant to a federal landowner shall be matched with at least an equal amount of money by the federal landowner.

(c) In expending the money authorized by Subsection [~~(4)~~] (3)(a)(i), the department shall use existing infrastructure and employees to plan and implement the project.

[~~(5)~~] (4) In giving a grant, the department shall consider the effectiveness of a project in preventing:

(a) first, the risk to public safety and health from:

(i) air pollution;

(ii) flooding; and

(iii) reduced visibility on a highway;

(b) second, damage to the environment, including:

(i) soil erosion;

(ii) degraded water quality; and

(iii) release of carbon; and

(c) third, damage to:

(i) a local economy; and

(ii) habitat for wildlife or livestock.

Section 3. Section 4-20-2 is amended to read:

4-20-2. Rangeland Improvement Account -- Administered by department.

(1) (a) There is created a restricted account within the General Fund known as the "Rangeland Improvement Account."

(b) The restricted account shall consist of:

(i) money received by the state from the United States Secretary of Interior under the Taylor Grazing Act, 43 U.S.C. Section 315 et seq., for sales, leases, and fees;

(ii) grants or appropriations from the state or federal government; and

(iii) grants from private foundations.

(c) Interest earned on the restricted account shall be deposited into the General Fund.

[~~(2) Any unallocated balance in the restricted account at the end of a fiscal year is nonlapsing.~~]

[~~(3)~~] (2) The department shall:

(a) administer the restricted account;

(b) obtain from the United States Department of Interior the receipts collected from:

(i) fees in each grazing district; and

(ii) the receipts collected from the sale or lease of public lands; and

(c) distribute restricted account money in accordance with Section 4-20-3.

Section 4. Section 9-4-1501 is amended to read:

Part 15. Methamphetamine Housing Reconstruction and Rehabilitation Account Act

9-4-1501. Title.

This part is known as the "Methamphetamine Housing Reconstruction and Rehabilitation [~~Fund~~] Account Act."

Section 5. Section 9-4-1502 is amended to read:

9-4-1502. Definitions.

As used in this part:

(1) "Account" means the Methamphetamine Housing Reconstruction and Rehabilitation Account created in Section 9-4-1503.

[~~(1)~~] (2) "Contaminated by methamphetamine" means that a residence is:

(a) polluted by hazardous materials as a result of the use, production, or presence of methamphetamine in excess of decontamination standards adopted by the Department of Health under Section 26-51-201; and

(b) placed on a contamination list by a local health department in accordance with Section 19-6-903.

[~~(2) "Fund" means the Methamphetamine Housing Reconstruction and Rehabilitation Fund created in Section 9-4-1503.~~]

(3) "Qualified housing organization" means an affiliate located in this state of an organization if that organization:

(a) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(b) operates on a worldwide basis;

(c) has the primary purposes of:

(i) constructing, reconstructing, and rehabilitating residences that are:

(A) sold to low-income persons selected by the organization in accordance with any rules the division makes as authorized by Section 9-4-1503; and

(B) financed with loans that are not subject to interest as determined by the organization in accordance with any rules the division makes as authorized by Section 9-4-1503; and

(ii) purchasing property upon which residences described in Subsection (3)(c)(i) are constructed, reconstructed, or rehabilitated;

(d) expends a portion of the repayment on the loans described in Subsection (3)(c)(i)(B) to finance:

(i) the construction, reconstruction, and rehabilitation of residences described in Subsection (3)(c)(i); and

(ii) the purchase of property upon which residences described in Subsection (3)(c)(i) are constructed, reconstructed, or rehabilitated; and

(e) has built more than 250,000 residences in total.

(4) (a) "Residence" means a single-family residence.

(b) "Residence" includes:

(i) a condominium;

(ii) a garage;

(iii) real property appurtenant to a residence:

(A) as determined by the division in accordance with any rules the division makes as authorized by Section 9-4-1503; and

(B) if that real property is contaminated by methamphetamine;

(iv) a shed; or

(v) a town home.

(c) "Residence" does not include:

(i) an apartment or other rental unit as determined by the division in accordance with any rules the division makes as authorized by Section 9-4-1503; or

(ii) an outbuilding except for a garage or shed.

Section 6. Section 9-4-1503 is amended to read:

9-4-1503. Methamphetamine Housing Reconstruction and Rehabilitation Account -- Creation -- Interest -- Use of contributions and interest.

(1) There is created within the General Fund a restricted account known as the Methamphetamine Housing Reconstruction and Rehabilitation [~~Fund~~] Account.

(2) The [~~fund~~] account shall be funded by:

(a) contributions deposited into the [~~fund~~] account in accordance with Section 59-10-1314; and

(b) interest described in Subsection (3).

(3) (a) The [~~fund~~] account shall earn interest.

(b) Interest earned on the [~~fund~~] account shall be deposited into the [~~fund~~] account.

(4) (a) The division shall distribute contributions and interest deposited into the [~~fund~~] account to one or more qualified housing organizations.

(b) (i) Subject to Subsection (4)(b)(ii), a qualified housing organization that receives a distribution from the division in accordance with Subsection (4)(a) shall expend the distribution to:

(A) reconstruct or rehabilitate one or more residences that are:

(I) sold to low-income persons selected by the qualified housing organization in accordance with any rules the division makes as authorized by this section; and

(II) financed with loans that are not subject to interest as determined by the qualified housing organization in accordance with any rules the division makes as authorized by this section; or

(B) purchase property upon which a residence described in Subsection (4)(b)(i)(A) is reconstructed or rehabilitated.

(ii) A qualified housing organization may not expend a distribution the qualified housing organization receives in accordance with this Subsection (4) for any administrative cost relating to an expenditure authorized by Subsection (4)(b)(i).

(5) (a) In accordance with any rules the division makes as authorized under Subsection (6)(c), a qualified housing organization may apply to the division to receive a distribution under Subsection (4).

(b) A qualified housing organization may apply to the division to receive a distribution under Subsection (4) by filing an application with the division:

(i) on or before November 1; and

(ii) on a form provided by the division.

(c) The application:

(i) shall include information required by the division establishing that the qualified housing organization owns each residence with respect to which the qualified housing organization plans to expend a distribution under Subsection (4);

(ii) shall include information required by the division establishing the qualified housing organization's plan to expend the distribution for a purpose described in Subsection (4)(b)(i);

(iii) shall include information required by the division establishing that the qualified housing organization's plan to expend the distribution meets conditions established in accordance with Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act, for a local health department to remove the residence from the local health department's decontamination list; and

(iv) may include other information the division requires by rule.

(d) The division shall determine on or before the November 30 immediately following the November 1 described in Subsection (5)(b)(i) whether a qualified housing organization's application to the division meets the requirements of Subsection (5)(c).

(e) (i) The division shall distribute money credited to the [~~fund~~] account to each qualified housing organization that meets the requirements of Subsection (5)(c) as determined by the division:

(A) on or before the December 31 immediately following the November 1 described in Subsection (5)(b)(i); and

(B) in accordance with this Subsection (5)(e).

(ii) The division shall determine:

(A) the population of the county in which a qualified housing organization that meets the requirements of Subsection (5)(c) is headquartered; and

(B) the total population of all of the counties in which the qualified housing organizations that meet the requirements of Subsection (5)(c) are headquartered.

(iii) Except as provided in Subsection (5)(e)(iv), the division shall determine a qualified housing organization's distribution by making the following calculation:

(A) calculating a percentage determined by dividing the population of the county in which the qualified housing organization that meets the requirements of Subsection (5)(c) is headquartered by the population calculated under Subsection (5)(e)(ii)(B); and

(B) multiplying the percentage determined under Subsection (5)(e)(iii)(A) by the [~~fund~~] account balance.

(iv) If two or more qualified housing organizations that meet the requirements of Subsection (5)(c) as determined by the division are headquartered within one county, the division shall determine each qualified housing organization's distribution by:

(A) making the calculation required by Subsection (5)(e)(iii); and

(B) dividing the amount calculated under Subsection (5)(e)(iii) by the number of qualified housing organizations that meet the requirements of Subsection (5)(c) as determined by the division that are headquartered within the county.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules:

(a) to define what constitutes:

(i) a low-income person;

(ii) a loan that is not subject to interest; or

(iii) an apartment or other rental unit;

(b) for determining the circumstances under which real property is appurtenant to a residence;

(c) prescribing information a qualified housing organization is required to include with an application under Subsection (5);

(d) for purposes of Subsection (5)(e), for determining the population of a county; or

(e) for determining the county in which a qualified housing organization is headquartered.

Section 7. Section 9-10-108 is amended to read:

9-10-108. Deposits into fund.

(1) [~~(a)~~] All money received under Section 59-5-116 shall be deposited in the Revitalization Fund provided that no business or activity fee or tax based on gross receipts has been imposed by a county or the Tribe on oil and gas activities.

[~~(b) (i)~~] (2) (a) Nothing in this [~~Subsection (1)~~] section prohibits a county from imposing a charge described in Subsection (1)[~~(a)~~] with respect to any gathering, transmission, or local distribution pipeline in which the county owns an interest.

[~~(ii)~~] (b) Nothing in this [~~Subsection (1)~~] section prohibits the Tribe from imposing a charge described in Subsection (1)[~~(a)~~] with respect to any gathering, transmission, or local distribution pipeline in which the Tribe owns an interest.

[~~(2) Any unallocated balance in the fund at the end of each fiscal year shall be nonlapsing.~~]

Section 8. Section 9-11-104 is amended to read:

9-11-104. San Juan Navajo Revitalization Fund.

(1) (a) There is created a restricted special revenue fund called the "Navajo Revitalization Fund."

(b) The revitalization fund shall consist of:

(i) money deposited to the revitalization fund under this chapter;

(ii) money deposited to the revitalization fund under Section 59-5-119; and

(iii) any loan repayment or interest on a loan issued under this chapter.

(2) (a) The revitalization fund shall earn interest.

(b) The interest earned on revitalization fund money shall be deposited into the fund.

[~~(3) The unallocated balance in the revitalization fund at the end of a fiscal year is nonlapsing.~~]

[~~(4)~~] (3) Beginning for fiscal year 2010-11, the division may use revitalization fund money for the administration of the revitalization fund, but this amount may not exceed 4% of the annual receipts to the revitalization fund.

Section 9. Section 9-17-102 is amended to read:

9-17-102. Humanitarian Service and Educational and Cultural Exchange Restricted Account.

(1) There is created in the General Fund a restricted account known as the "Humanitarian Service and Educational and Cultural Exchange Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

[~~(3) Funds in the account are nonlapsing.~~]

[~~(4)~~] (3) Upon appropriation by the Legislature, the department shall distribute funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) have a national parent organization which:

(i) provides international humanitarian service projects; and

(ii) has youth programs including programs to foster leadership in high school students, humanitarian service in high school and college, and conducts and promotes community service projects;

(c) have a non-profit youth exchange program that does not compensate those who administer the program within the state;

(d) have an annual leadership conference, which does not compensate those who administer the program within the state;

(e) have high school service clubs, which promote humanitarian services on a state level, a national level, and an international level; and

(f) have college service clubs, which promote humanitarian service on a state level, a national level, and an international level.

[~~(5)~~] (4) (a) An organization described in Subsection [~~(4)~~] (3) may apply to the department to receive a distribution in accordance with Subsection [~~(4)~~] (3).

(b) An organization that receives a distribution from the department in accordance with Subsection [~~(4)~~] (3) shall expend the distribution only to:

(i) pay the costs of supporting the following programs within the state:

(A) youth programs including programs to foster leadership in high school students and humanitarian service in high school and college;

(B) community service projects;

(C) a non-profit youth exchange program;

(D) an annual leadership conference;

(E) high school service clubs, which promote humanitarian service on a state level, a national level, and an international level; and

(F) college service clubs, which promote humanitarian service on a state level, a national level, and an international level; and

(ii) pay the costs of issuing or reordering Humanitarian Service and Educational and Cultural Exchange support special group license plate decals.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules providing procedures for an organization to apply to the department to receive a distribution under Subsection [~~(4)~~] (3).

Section 10. Section 19-1-403 is amended to read:

19-1-403. Clean Fuels and Vehicle Technology Fund -- Contents -- Loans or grants made with fund money.

(1) (a) There is created a revolving fund known as the Clean Fuels and Vehicle Technology Fund.

(b) The fund consists of:

(i) appropriations to the fund;

(ii) other public and private contributions made under Subsection (1)[~~(d)~~](c);

(iii) interest earnings on cash balances; and

(iv) all money collected for loan repayments and interest on loans.

[~~(c) All money appropriated to the fund is nonlapsing.~~]

[~~(d)~~] (c) The department may accept contributions from other public and private sources for deposit into the fund.

(2) (a) Except as provided in Subsection (3), the department may make a loan or a grant with money available in the fund for:

(i) the conversion of a private sector business vehicle or a government vehicle to use a clean fuel, if certified by the Air Quality Board under Subsection 19-1-405(1)(a);

(ii) the purchase of:

(A) an OEM vehicle for use as a private sector business vehicle or government vehicle; or

(B) a vehicle, certified by the Air Quality Board under Subsection 19-1-405(1)(d), for use as a private sector business vehicle or government vehicle;

(iii) the retrofit, certified by the Air Quality Board under Subsection 19-1-405(1)(d), of a private sector business vehicle or government vehicle;

(iv) a fuel system, certified by the Air Quality Board under Subsection 19-1-405(1)(d), for a private sector business vehicle or government vehicle; or

(v) a state match of a federal or nonfederal grant for any item under this Subsection (2)(a).

(b) The amount of a loan for any vehicle under Subsection (2)(a)(i) or (2)(a)(ii)(A) may not exceed:

(i) the actual cost of the vehicle conversion;

(ii) the incremental cost of purchasing the OEM vehicle; or

(iii) the cost of purchasing the OEM vehicle if there is no documented incremental cost.

(c) The amount of a grant for any vehicle under Subsection (2)(a)(i) or (2)(a)(ii)(A) may not exceed:

(i) 50% of the actual cost of the vehicle conversion minus the amount of any tax credit claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is requested; or

(ii) 50% of the incremental cost of purchasing an OEM vehicle minus the amount of any tax credit claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is requested.

(d) (i) Except as provided in Subsection (3) and subject to the availability of money in the fund, the department may make a loan for the purchase of vehicle refueling equipment for a private sector business vehicle or a government vehicle.

(ii) The maximum amount loaned per installation of refueling equipment may not exceed the actual cost of the refueling equipment.

(iii) Except as provided in Subsection (3) and subject to the availability of money in the fund, the department may make a grant for a state match of a federal or nonfederal grant for the purchase of vehicle refueling equipment for a private sector business vehicle or a government vehicle.

(3) The department may not make a loan or grant under this part for an electric-hybrid vehicle.

(4) The department may:

(a) reimburse itself for the costs incurred in administering the fund from:

(i) the fund; or

(ii) application fees; and

(b) establish an application fee for a loan or grant from the fund by following the procedures and requirements of Section 63J-1-504.

(5) (a) The fund balance may not exceed $10,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the fund balance at $10,000,000 shall be deposited in the General Fund.

(6) (a) Loans made from money in the fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy shall be filed with the department.

Section 11. Section 26-8a-207 is amended to read:

26-8a-207. Emergency medical services grant program.

(1) (a) The department shall receive as dedicated credits the amount established in Section 51-9-403. That amount shall be transferred to the department by the Division of Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(b) Funds transferred to the department under this section shall be used for improvement of delivery of emergency medical services and administrative costs as described in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this section shall be made from those dedicated credits.

[~~(c) All funding for the program created by this section shall be nonlapsing.~~]

(2) (a) The department may use the funds transferred to it under Subsection (1):

(i) to provide staff support; and

(ii) for other expenses incurred in:

(A) administration of grant funds; and

(B) other department administrative costs under this chapter.

(b) After funding staff support, administrative expenses, and trauma system development, the department and the committee shall make emergency medical services grants from the remaining funds received as dedicated credits under Subsection (1). A recipient of a grant under this Subsection (2)(b) must actively provide emergency medical services within the state.

(c) The department shall distribute not less than 25% of the funds, with the percentage being authorized by a majority vote of the committee, as per capita block grants for use specifically related to the provision of emergency medical services to nonprofit prehospital emergency medical services providers that are either licensed or designated and to emergency medical services that are the primary emergency medical services for a service area. The department shall determine the grant amounts by prorating available funds on a per capita basis by county as described in department rule.

(d) The committee shall award the remaining funds as competitive grants for use specifically related to the provision of emergency medical services based upon rules established by the committee.

Section 12. Section 26-21a-302 is amended to read:

26-21a-302. Cancer Research Restricted Account.

(1) As used in this section, "account" means the Cancer Research Restricted Account created by this section.

(2) There is created in the General Fund a restricted account known as the "Cancer Research Restricted Account."

(3) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions;

(c) donations or grants from public or private entities; and

(d) interest and earnings on fund money.

[~~(4) Funds in the account are nonlapsing.~~]

[~~(5)~~] (4) The department shall distribute funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) have been designated as an official cancer center of the state;

(c) is a National Cancer Institute designated cancer center; and

(d) have as part of its primary mission:

(i) cancer research programs in basic science, translational science, population science, and clinical research to understand cancer from its beginnings; and

(ii) the dissemination and use of knowledge developed by the research described in Subsection [~~(5)~~] (4)(d)(i) for the creation and improvement of cancer detection, treatments, prevention, and outreach programs.

[~~(6)~~] (5) (a) An organization described in Subsection [~~(5)~~] (4) may apply to the department to receive a distribution in accordance with Subsection [~~(5)~~] (4).

(b) An organization that receives a distribution from the department in accordance with Subsection [~~(5)~~] (4) shall expend the distribution only to conduct cancer research for the purpose of making improvements in cancer treatments, cures, detection, and prevention of cancer at the molecular and genetic levels.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules providing procedures for an organization to apply to the department to receive a distribution under Subsection [~~(5)~~] (4).

Section 13. Section 31A-38-104 is amended to read:

31A-38-104. Authorization -- Money transferred for reserves.

(1) The Department of Workforce Services may:

(a) convert the bridge program to the state program through any of the following, or combination of the following, that the Department of Workforce Services considers best serves the needs of qualified participants:

(i) a contract with a licensed insurance company authorized to do business in the state;

(ii) through any other arrangement acceptable under the Trade Reform Act; or

(iii) a self-insurance program through a third party administrator as provided in Subsection 31A-38-103(3)(b)(ii); and

[~~(b) (i) in cooperation with the Division of Finance, establish an appropriate state fund for the purpose of operation of the state program; and~~]

[~~(ii) transfer the balance of any monies received under the bridge program into this fund; and~~]

[~~(c)~~] (b) obligate up to $2,000,000 of the [~~Workforce Services~~] Special Administrative Expense [~~Fund~~] Account created in Section 35A-4-506 as reserves for the state program.

[~~(2) The monies in the fund created under Subsection (1)(b) are: (a) nonlapsing; and (b) restricted to the purposes of the state program established under this chapter.~~]

[~~(3)~~] (2) The [~~monies~~] money in Subsection (1)[~~(c)~~](b) may be[~~: (a)~~] used until the reserves in the state program become adequate[~~; and~~].

[~~(b) transferred into or out of any fund created under Subsection (1)(b).~~]

Section 14. Section 35A-4-506 is amended to read:

35A-4-506. Special Administrative Expense Account.

(1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."

(2) (a) Interest and penalties collected under this chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.

(b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.

(c) The money may not be expended in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.

(4) Money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.

(5) Money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Federal Social Security Act, 42 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.

(6) Money in the restricted account shall be available to the division for expenditure in accordance with this section [~~and shall not lapse at any time or be transferred to any other fund or account except as directed by the Legislature~~].

(7) The state treasurer shall pay all warrants drawn upon it by the division or its duly authorized agent in accordance with such rules as the department shall prescribe.

(8) (a) The state treasurer shall be liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account provided for under this chapter.

(b) Liability on the official bond shall exist in addition to any liability upon any separate bond existent on the effective date of this provision or that may be given in the future.

(c) Any money recovered on any surety bond losses sustained by the Special Administrative Expense Account shall be deposited in the restricted account or in the General Fund if so directed by the Legislature.

Section 15. Section 41-22-19.5 is amended to read:

41-22-19.5. Off-highway Access and Education Restricted Account -- Creation -- Funding -- Distribution of funds by the Board of Parks and Recreation.

(1) There is created in the General Fund a restricted account known as the Off-highway Access and Education Restricted Account.

(2) The account shall be funded by:

(a) contributions deposited into the Off-highway Access and Education Restricted Account in accordance with Section 41-1a-230.6;

(b) private contributions; and

(c) donations or grants from public or private entities.

[~~(3) Funds in the account are nonlapsing.~~]

[~~(4)~~] (3) The Legislature shall appropriate money in the account to the board.

[~~(5)~~] (4) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

[~~(6)~~] (5) The board may expend up to 10% of the money appropriated under Subsection [~~(4)~~] (3) to:

(a) administer account distributions in accordance with Subsections [~~(7)~~] (6) through [~~(10)~~] (9); and

(b) administer off-highway vehicle provisions under this chapter.

[~~(7)~~] (6) The board shall distribute the funds to a charitable organization that:

(a) qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) has at least one full-time employee; and

(c) has as a primary part of its mission to:

(i) protect access to public lands by motor vehicle and off-highway vehicle operators; and

(ii) educate the public about appropriate off-highway vehicle use.

[~~(8)~~] (7) The board may only consider proposals that are:

(a) proposed by a charitable organization under Subsection [~~(7)~~] (6); and

(b) designed to:

(i) protect access to public lands by motor vehicle and off-highway vehicle operators; and

(ii) educate the public about appropriate off-highway vehicle use.

[~~(9)~~] (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules providing procedures for an organization to apply to receive funds under this section.

[~~(10)~~] (9) The board may not:

(a) require matching funds from a charitable organization as a condition of receiving funds; or

(b) prohibit the use of funds to cover litigation expenses incurred in protecting access to public lands by motor vehicle and off-highway vehicle operators.

Section 16. Section 51-9-409 is amended to read:

51-9-409. Guardian Ad Litem Services Account established -- Funding -- Uses.

(1) (a) There is created in the General Fund a restricted account known as the Guardian Ad Litem Services Account, for the purpose of funding the Office of Guardian Ad Litem, in accordance with the provisions of Sections 78A-6-901 and 78A-6-902.

(b) The account shall be funded by:

(i) the donation described in Subsection 41-1a-422(1)(a)(i)(F); and

(ii) the amount allocated to the account as provided in Subsections (2) and (3).

(2) Except as provided in Subsection (3), the Division of Finance shall allocate 1.75% of the collected surcharge established in Section 51-9-401 to the Guardian Ad Litem Services Account.

(3) The amount allocated under Subsection (2) may not exceed the amount appropriated to the Guardian Ad Litem Services Account by the Legislature.

Section 17. Section 53-1-118 is amended to read:

53-1-118. Public Safety Honoring Heroes Restricted Account -- Creation -- Funding -- Distribution of funds by the commissioner.

(1) There is created in the General Fund a restricted account known as the Public Safety Honoring Heroes Restricted Account.

(2) The account shall be funded by:

(a) contributions deposited into the Public Safety Honoring Heroes Restricted Account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

[~~(3) Funds in the account are nonlapsing.~~]

[~~(4)~~] (3) The Legislature shall appropriate money in the account to the commissioner.

[~~(5)~~] (4) The commissioner shall distribute the funds to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code; and

(b) have as a primary part of their mission to support the families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees.

[~~(6)~~] (5) The commissioner may only consider proposals that are:

(a) proposed by a charitable organization under Subsection [~~(5)~~] (4); and

(b) designed to support families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees.

[~~(7)~~] (6) (a) An organization described in Subsection [~~(5)~~] (4) may apply to the commissioner to receive a distribution in accordance with Subsection [~~(5)~~] (4).

(b) An organization that receives a distribution from the commissioner in accordance with Subsection [~~(5)~~] (4) shall expend the distribution only to support the families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees.

[~~(8)~~] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall make rules providing procedures for an organization to apply to receive funds under this section.

Section 18. Section 53-7-204.2 is amended to read:

53-7-204.2. Fire Academy -- Establishment -- Fire Academy Support Account -- Funding.

(1) In this section:

(a) "Account" means the Fire Academy Support Account created in Subsection (4).

(b) "Property insurance premium" means premium paid as consideration for property insurance as defined in Section 31A-1-301.

(2) The board shall:

(a) establish a fire academy that:

(i) provides instruction and training for paid, volunteer, institutional, and industrial firefighters;

(ii) develops new methods of firefighting and fire prevention;

(iii) provides training for fire and arson detection and investigation;

(iv) provides public education programs to promote fire safety;

(v) provides for certification of firefighters, pump operators, instructors, and officers; and

(vi) provides facilities for teaching fire-fighting skills;

(b) establish a cost recovery fee in accordance with Section 63J-1-504 for training commercially employed firefighters; and

(c) request funding for the academy.

(3) The board may:

(a) accept gifts, donations, and grants of property and services on behalf of the fire academy; and

(b) enter into contractual agreements necessary to facilitate establishment of the school.

(4) (a) To provide a funding source for the academy and for the general operation of the State Fire Marshal Division, there is created in the General Fund a restricted account known as the Fire Academy Support Account.

(b) The following revenue shall be deposited in the account to implement this section:

(i) the percentage specified in Subsection (5) of the annual tax for each year that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums and as applied to fire and allied lines insurance collected by insurance companies within the state;

(ii) the percentage specified in Subsection (6) of all money assessed and collected upon life insurance premiums within the state;

(iii) the cost recovery fees established by the board;

(iv) gifts, donations, and grants of property on behalf of the fire academy; [~~and~~]

(v) appropriations made by the Legislature[~~.~~]; and

(vi) money collected from civil penalties in accordance with Section 53-7-504.

(5) The percentage of the tax specified in Subsection (4)(b)(i) to be deposited in the account each fiscal year is 25%.

(6) The percentage of the money specified in Subsection (4)(b)(ii) to be deposited in the account each fiscal year is 5%.

Section 19. Section 53A-1-304 is amended to read:

53A-1-304. Autism Awareness Restricted Account.

(1) There is created in the General Fund a restricted account known as the "Autism Awareness Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

[~~(3) Funds in the account are nonlapsing.~~]

[~~(4)~~] (3) Upon appropriation by the Legislature, the superintendent shall distribute funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) promote access to resources and responsible information for individuals of all ages who have, or are affected by, autism or related conditions;

(c) is an independent organization that has representation from state agencies and private providers serving individuals with autism spectrum disorder and their families in the state;

(d) includes representation of:

(i) national and local autism advocacy groups, as available; and

(ii) interested parents and professionals; and

(e) does not endorse any specific treatment, therapy, or intervention used for autism.

[~~(5)~~] (4) (a) An organization described in Subsection [~~(4)~~] (3) may apply to the superintendent to receive a distribution in accordance with Subsection [~~(4)~~] (3).

(b) An organization that receives a distribution from the superintendent in accordance with Subsection [~~(4)~~] (3) shall expend the distribution only to:

(i) pay for autism education and public awareness of programs and related services in the state;

(ii) enhance programs designed to serve individuals with autism;

(iii) provide support to caregivers providing services for individuals with autism;

(iv) pay for academic scholarships and research efforts in the area of autism spectrum disorder; and

(v) pay the costs of issuing or reordering Autism Awareness Support special group license plate decals.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education may make rules providing procedures for an organization to apply to the superintendent to receive a distribution under Subsection [~~(4)~~] (3).

Section 20. Section 53A-21-401 is amended to read:

53A-21-401. Capital Outlay Loan Program -- School Building Revolving Account -- Access to the account.

(1) There is created:

(a) the "Capital Outlay Loan Program" to provide:

(i) short-term help to school districts to meet district needs for school building construction and renovation; and

(ii) assistance to charter schools to meet school building construction and renovation needs; and

(b) [~~a nonlapsing~~] the "School Building Revolving Account" administered within the Uniform School Fund by the state superintendent of public instruction in accordance with rules adopted by the State Board of Education.

(2) The State Board of Education may not allocate funds from the School Building Revolving Account that exceed a school district's bonding limit minus its outstanding bonds.

(3) In order to receive money from the account, a school district shall:

(a) levy a combined capital levy rate of at least .0024;

(b) contract with the state superintendent of public instruction to repay the money, with interest at a rate established by the state superintendent, within five years of receipt, using future state capital outlay allocations, local revenues, or both;

(c) levy sufficient ad valorem taxes under Section 11-14-310 to guarantee annual loan repayments, unless the state superintendent of public instruction alters the payment schedule to improve a hardship situation; and

(d) meet any other condition established by the State Board of Education pertinent to the loan.

(4) (a) The state superintendent shall establish a committee, including representatives from state and local education entities, to:

(i) review requests by school districts for loans under this section; and

(ii) make recommendations regarding approval or disapproval of the loan applications to the state superintendent.

(b) If the committee recommends approval of a loan application under Subsection (4)(a)(ii), the committee's recommendation shall include:

(i) the recommended amount of the loan;

(ii) the payback schedule; and

(iii) the interest rate to be charged.

(5) (a) There is established within the School Building Revolving Account the Charter School Building Subaccount administered by the State Board of Education, in consultation with the State Charter School Board, in accordance with rules adopted by the State Board of Education.

(b) The Charter School Building Subaccount shall consist of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the repayment of loans made from the subaccount; and

(iii) interest earned on money in the subaccount.

(c) The state superintendent of public instruction shall make loans to charter schools from the Charter School Building Subaccount to pay for the costs of:

(i) planning expenses;

(ii) constructing or renovating charter school buildings;

(iii) equipment and supplies; or

(iv) other start-up or expansion expenses.

(d) Loans to new charter schools or charter schools with urgent facility needs may be given priority.

(6) (a) The State Board of Education shall establish a committee to:

(i) review requests by charter schools for loans under this section; and

(ii) make recommendations regarding approval or disapproval of the loan applications to the State Charter School Board and the State Board of Education.

(b) (i) A committee established under Subsection (6)(a) shall include individuals who have expertise or experience in finance, real estate, or charter school administration.

(ii) Of the members appointed to a committee established under Subsection (6)(a):

(A) one member shall be nominated by the governor; and

(B) the remaining members shall be selected from a list of nominees submitted by the State Charter School Board.

(c) If the committee recommends approval of a loan application under Subsection (6)(a)(ii), the committee's recommendation shall include:

(i) the recommended amount of the loan;

(ii) the payback schedule; and

(iii) the interest rate to be charged.

(d) The committee members may not:

(i) be a relative, as defined in Section 53A-1a-518, of a loan applicant; or

(ii) have a pecuniary interest, directly or indirectly, with a loan applicant or any person or entity that contracts with a loan applicant.

(7) The State Board of Education, in consultation with the State Charter School Board, shall approve all loans to a charter school under this section.

(8) The term of a loan to a charter school under this section may not exceed five years.

(9) The State Board of Education may not approve loans to charter schools under this section that exceed a total of $2,000,000 in any year.

Section 21. Section 53A-24-105 is amended to read:

53A-24-105. Functions of the office.

The office may:

(1) apply for, receive, administer, and distribute funds made available through programs of federal or state governments;

(2) cooperate with federal or state governmental entities to administer programs and program funds;

(3) contract or cooperate with public or private entities or individuals;

(4) if designated by the responsible authority, and with the approval of the board, perform any functions or services for the federal or state government that relate to individuals with disabilities;

(5) establish subordinate administrative units necessary to increase efficiency and improve the delivery of services to individuals with disabilities;

(6) establish and operate community service centers, rehabilitation facilities, and workshops, and make grants to public and nonprofit organizations for those purposes;

(7) determine eligibility for, and the nature and scope of, services to be provided under the state plan for vocational rehabilitation or other programs administered by the office;

(8) assist individuals with severe disabilities to establish and operate vending machine services and other small businesses, and perform services authorized under Title 55, [~~Chapters 5 and 5a~~] Chapter 5, Blind Persons Operating Vending Stands, and Chapter 5a, Blind Product Sales;

(9) furnish materials, tools, equipment, initial stocks and supplies, and occupational licenses needed by rehabilitation facilities, workshops, and small businesses established under this chapter, and develop and execute marketing plans for materials produced by those operations;

(10) place money received by the office or a subordinate unit through sale of products or services as authorized under this chapter into a [~~nonlapsing~~] fund managed by the office and used to support additional training, production, and sales activities;

(11) conduct studies and investigations, give demonstrations and make reports, and provide training and instruction related to the work of the office;

(12) establish and maintain research fellowships and traineeships, including necessary stipends and allowances for those receiving training and instruction;

(13) institute and supervise programs to encourage the conservation of sight and hearing and assist in overcoming and preventing disabling conditions;

(14) provide diagnostic, placement, vocational rehabilitation, training, adjustment, and independent living services; and

(15) do all other things necessary to carry out assignments made by law or the board in assisting and rehabilitating persons with disabilities.

Section 22. Section 53C-3-203 is amended to read:

53C-3-203. Land Exchange Distribution Account.

(1) As used in this section, "account" means the Land Exchange Distribution Account created in Subsection (2)(a).

(2) (a) There is created within the General Fund a restricted account known as the Land Exchange Distribution Account.

(b) The account shall consist of revenue deposited in the account as required by Section 53C-3-202.

(3) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(4) The Legislature shall annually appropriate from the account in the following order:

(a) $1,000,000 to the Constitutional Defense Restricted Account, created in 63C-4-103, to be used in accordance with Subsection 63C-4-103[~~(6)~~](5) for:

(i) fiscal year 2010-11;

(ii) fiscal year 2011-12; and

(iii) fiscal year 2012-13; and

(b) from the deposits to the account remaining after the appropriation in Subsection (4)(a), the following amounts:

(i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral revenue generated from the acquired land, exchanged land, acquired mineral interests, or exchanged mineral interests located in each county, to be used to mitigate the impacts caused by mineral development;

(ii) 25% of the deposits to counties in amounts proportionate to the total surface and mineral acreage within each county that was conveyed to the United States under the agreement or an exchange, to be used to mitigate the loss of mineral development opportunities resulting from the agreement or exchange;

(iii) 1.68% of the deposits to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah;

(iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources development in the state;

(v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to be used for water development in the state; and

(vi) 7.5% of the deposits to the Constitutional Defense Restricted Account created in Section 63C-4-103.

(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 1% of the deposits remaining in the account after the appropriation is made in accordance with Subsection (4)(a) to the Geological Survey, to be used for test wells, other hydrologic studies, and air quality monitoring in the West Desert.

(6) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5% of the deposits remaining in the account after the appropriation is made in Subsection (4)(a) to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

Section 23. Section 58-31b-103 is amended to read:

58-31b-103. Nurse Education and Enforcement Account.

(1) There is created a restricted account within the General Fund known as the "Nurse Education and Enforcement Account."

(2) The restricted account shall [~~be nonlapsing and~~] consist of:

(a) administrative penalties imposed under Section 58-31b-503; and

(b) interest earned on money in the account.

(3) Money in the account may be appropriated by the Legislature for the following purposes:

(a) education and training of licensees or potential licensees under this chapter;

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and

(iii) monitoring compliance of renewal requirements;

(c) survey nursing education programs throughout the state;

(d) education and training of board members; and

(e) review and approve nursing education programs and medication aide certified training programs.

Section 24. Section 58-44a-103 is amended to read:

58-44a-103. Certified Nurse Midwife Education and Enforcement Account.

(1) There is created a restricted account within the General Fund known as the "Certified Nurse Midwife Education and Enforcement Account."

(2) The restricted account shall [~~be nonlapsing and~~] consist of:

(a) administrative penalties imposed under Section 58-44a-402; and

(b) interest earned on money in the account.

(3) Money in the account may be appropriated by the Legislature for the following purposes:

(a) education and training of licensees under this chapter;

(b) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and

(iii) monitoring compliance of renewal requirements; and

(c) education and training of board members.

Section 25. Section 58-63-103 is amended to read:

58-63-103. Use of monies for education and enforcement.

[~~(1)~~] The director may, with the concurrence of the board, use the monies collected under Section 58-63-503 for the following purposes:

[~~(a)~~] (1) educating and training licensees under this chapter;

[~~(b)~~] (2) educating and training the general public or other interested persons in matters concerning the laws that govern the practices licensed under this chapter; and

[~~(c)~~] (3) enforcing this chapter by:

[~~(i)~~] (a) investigating unprofessional or unlawful conduct; and

[~~(ii)~~] (b) providing legal representation to the division when it takes legal action against a person charged with unprofessional or unlawful conduct.

[~~(2) The monies collected under Section 58-63-503 and used for the purposes listed in Subsection (1) are nonlapsing.~~]

Section 26. Section 58-76-103 is amended to read:

58-76-103. Professional Geologist Education and Enforcement Account.

(1) There is created a restricted account within the General Fund known as the "Professional Geologist Education and Enforcement Account."

(2) The restricted account shall [~~be nonlapsing and~~] consist of money from:

(a) a surcharge fee established by the department in accordance with Section 63J-1-504, placed on initial, renewal, and reinstatement licensure fees under this chapter not to exceed 50% of the respective initial, renewal, or reinstatement licensure fee;

(b) administrative penalties collected pursuant to this chapter; and

(c) interest earned on money in the account.

(3) Money in the account may be appropriated by the Legislature for the following purposes:

(a) education and training of licensees under this chapter;

(b) education and training of the public or other interested persons in matters concerning geology laws and practices;

(c) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct;

(ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and

(iii) monitoring compliance of renewal requirements; and

(d) education and training of board members.

Section 27. Section 59-10-1314 is amended to read:

59-10-1314. Contribution to Methamphetamine Housing Reconstruction and Rehabilitation Account.

(1) For a taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2012 only, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

(a) deposited into the Methamphetamine Housing Reconstruction and Rehabilitation [~~Fund~~] Account created in Section 9-4-1503; and

(b) expended for the purposes described in Section 9-4-1503.

(2) The commission shall:

(a) determine the total amount of contributions designated in accordance with this section for the taxable year described in Subsection (1); and

(b) credit the amount described in Subsection (2)(a) to the Methamphetamine Housing Reconstruction and Rehabilitation [~~Fund~~] Account created in Section 9-4-1503.

Section 28. Section 59-12-103 is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product that:

(I) is transferred electronically; and

(II) would be subject to a tax under this chapter if the product was transferred in a manner other than electronically; or

(B) of a repair or renovation of a product that:

(I) is transferred electronically; and

(II) would be subject to a tax under this chapter if the product was transferred in a manner other than electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(f) (i) A tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease if the billing period for the transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

(iii) the tax imposed by Subsection (2)(c)(ii); and

(iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) $17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation

and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than $1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) $17,500,000.

(b) (i) The first $500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), $150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

[~~(e) Any unexpended monies described in Subsection (5)(d) that remain in the Water Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.~~]

[~~(f)~~] (e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)[~~(g)~~](f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

[~~(g)~~] (f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)[~~(f)~~](e) over $150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in the Transportation Fund created by Section 72-2-102.

(7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies, beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under Subsection (7)(b), when the highway general obligation bonds have been paid off and the highway projects completed that are intended to be paid from revenues deposited in the Centennial Highway Fund Restricted Account as determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the Division of Finance shall deposit $55,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal year beginning on or after July 1, 2009, the Division of Finance shall annually deposit $90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall annually deposit $90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10,

$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

(11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii), and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1) to be expended to address chokepoints in construction management.

(b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into the Transportation Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

Section 29. Section 59-12-120 is amended to read:

59-12-120. Investment incentive to ski resorts for lease or purchase of certain equipment -- Ski Resort Capital Investment Restricted Account created -- Conditions and restrictions on receiving incentive -- State Tax Commission to administer.

(1) Any person operating a ski resort in the state of Utah shall be entitled to an investment incentive in an amount not to exceed the costs incurred in the purchase or lease of:

(a) snow making equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102.

(2) The investment incentive allowed in Subsection (1) shall be paid from the Ski Resort Capital Investment Restricted Account created in Subsection (5). The investment incentive shall be allowed only to the extent that for each dollar of investment incentive allowed, three dollars shall be expended for the purchase or lease of property described in Subsection (1) by a person operating a ski resort. The investment incentive paid out of the account shall be allocated among ski resorts based on the relation between the total sales tax collected from the sale of ski lift tickets in Utah to the total sales tax collected from the sale of ski lift tickets in Utah by each ski resort.

(3) The investment incentive is available to any person operating a ski resort in the state of Utah making purchases or leases of property described in Subsection (1) on or after January 1, 1989 and on or before December 31, 1992. All claims made under this section against the amount in the Ski Resort Capital Investment Restricted Account shall be made on or before June 30, 1993.

(4) If a ski resort is sold or leased to an unrelated third party within four years after the reporting period in which the investment incentive allowed in Subsection (1) is taken, the person who received the investment incentive shall reimburse to the Ski Resort Capital Investment Restricted Account an amount equal to all investment incentives received during the period described in Subsection (3). For purposes of this Subsection (4), if a ski resort is sold in connection with a bankruptcy proceeding, the sale shall be considered the kind of sale requiring the reimbursement of the investment incentive.

(5) There is created the Ski Resort Capital Investment Incentive Restricted Account within the General Fund. [~~The amount appropriated in this section is nonlapsing until July 1, 1993.~~]

(6) The State Tax Commission shall administer this section by rule.

Section 30. Section 61-2-204 is amended to read:

61-2-204. Utah Housing Opportunity Restricted Account.

(1) For purposes of this section, "account" means the Utah Housing Opportunity Restricted Account created by this section.

(2) There is created in the General Fund a restricted account known as the "Utah Housing Opportunity Restricted Account."

(3) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

[~~(4) Money in the account is nonlapsing.~~]

[~~(5)~~] (4) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

[~~(6)~~] (5) The Legislature shall appropriate money in the account to the division.

[~~(7)~~] (6) The division shall distribute the money in the account to one or more charitable organizations that:

(a) are tax exempt under Section 501(c)(3), Internal Revenue Code; and

(b) have as a primary part of their mission to provide support to organizations that create affordable housing for those in severe need.

[~~(8)~~] (7) The division may consider a proposal only if it is:

(a) proposed by an organization described in Subsection [~~(7)~~] (6); and

(b) designed to provide support to organizations that create affordable housing for those in severe need.

[~~(9)~~] (8) (a) An organization described in Subsection [~~(7)~~] (6) may apply to the division to receive a distribution in accordance with Subsection [~~(7)~~] (6).

(b) An organization that receives a distribution from the division in accordance with Subsection [~~(7)~~] (6) shall expend the distribution only to provide support to organizations that create affordable housing for those in severe need.

[~~(10)~~] (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules providing procedures for an organization to apply to receive money under this section.

Section 31. Section 62A-1-119 is amended to read:

62A-1-119. Respite Care Assistance Fund -- Use of money -- Restrictions -- Annual report.

(1) There is created a restricted special revenue fund known as the Respite Care Assistance Fund.

(2) The fund shall consist of:

(a) gifts, grants, devises, donations, and bequests of real property, personal property, or services, from any source, made to the fund; and

(b) any additional amounts as appropriated by the Legislature.

(3) The fund shall be administered by the director of the Utah Developmental Disabilities Council.

[~~(4) All monies appropriated to the fund are nonlapsing.~~]

[~~(5)~~] (4) The fund [~~monies~~] money shall be used for the following activities:

(a) to support a respite care information and referral system;

(b) to educate and train caregivers and respite care providers; and

(c) to provide grants to caregivers.

[~~(6)~~] (5) An individual who receives services paid for from the fund shall:

(a) be a resident of Utah; and

(b) be a primary care giver for:

(i) an aging individual; or

(ii) an individual with a cognitive, mental, or physical disability.

[~~(7)~~] (6) The fund [~~monies~~] money may not be used for:

(a) administrative expenses that are normally provided for by legislative appropriation; or

(b) direct services or support mechanisms that are available from or provided by another government or private agency.

[~~(8)~~] (7) All interest and other earnings derived from the fund [~~monies~~] money shall be deposited into the fund.

[~~(9)~~] (8) The state treasurer shall invest the monies in the fund under Title 51, Chapter 7, State Money Management Act.

[~~(10)~~] (9) The Department of Human Services shall make an annual report to the appropriate appropriations subcommittee of the Legislature regarding the status of the fund, including a report on the contributions received, expenditures made, and programs and services funded.

Section 32. Section 62A-15-103 is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

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

(iv) cooperate and assist other organizations and private treatment centers for substance abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers; and

(v) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health; [~~and~~]

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

(iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that all individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

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

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

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

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

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

(C) appropriate expenditure of public funds;

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

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

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

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their contract providers; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate;

(g) by July 1 of each year, provide to the Health and Human Services Interim Committee and the Health and Human Services Appropriations Subcommittee a written report that includes:

(i) the annual audit and review;

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

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

(iv) whether audit guidelines established under Section 62A-15-110 and Subsection 67-3-1(10) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds; and

(h) if requested by the Health and Human Services Interim Committee or the Health and Human Services Appropriations Subcommittee, provide an oral report as requested.

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

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

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

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

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

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

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

(a) the use of public funds;

(b) oversight responsibilities regarding public funds; and

(c) governance of substance abuse and mental health programs and services.

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

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

(a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or

(b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

Section 33. Section 63A-4-201 is amended to read:

63A-4-201. Risk Management Fund created -- Administration -- Use.

(1) (a) There is created the Risk Management Fund, which shall be administered by the risk manager.

(b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk

manager in consultation with the executive director.

(2) The risk manager may only use the fund to pay:

(a) insurance or reinsurance premiums;

(b) costs of administering the fund;

(c) loss adjustment expenses;

(d) risk control and related educational and training expenses; and

(e) loss costs which at the time of loss were eligible for payment under rules previously issued by the executive director under the authority of Section 63A-4-101.

(3) In addition to any money appropriated to the fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the fund:

(a) any insured loss or loss expenses paid by insurance or reinsurance companies;

(b) the gross amount of all premiums and surcharges received under Section 63A-4-202;

(c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;

(d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);

(e) savings from amounts otherwise appropriated for participation in the fund; and

(f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.

[~~(4) All money deposited in the fund are nonlapsing.~~]

[~~(5)~~] (4) (a) Pending disbursement, the risk manager shall provide surplus money in the fund to the state treasurer for investment as provided in Title 51, Chapter 7, State Money Management Act.

(b) The state treasurer shall deposit all interest earned on invested fund money into the fund.

Section 34. Section 63A-5-211 is amended to read:

63A-5-211. Planning Fund expenditures authorized -- Ceiling on expenditures -- Recovery.

(1) The Planning Fund shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a meaningful cost estimate of any facility or improvement with a demonstrable or immediate need.

(2) The director may make expenditures from the Planning Fund in order to provide planning information to the State Building Board, the governor, and the Legislature, up to a maximum of $350,000 in outstanding Planning Fund commitments.

(3) (a) The director shall authorize all payments made from the Planning Fund.

(b) These payments shall be a charge on the project for which they were drawn.

(c) The amount paid shall be credited to the Planning Fund when the Legislature appropriates money for any building project for which planning costs have previously been paid from the Planning Fund.

(4) (a) Money may also be expended from the Planning Fund for architectural and engineering services incident to the planning and preparation of applications for funds on construction financed by other than state sources, including federal grants.

(b) However, upon approval of such financing, the money spent for architectural and engineering services shall be returned as a reimbursement to the Planning Fund.

[~~(5) This fund does not lapse to the General Fund at the end of any year but shall remain as a permanent fund.~~]

Section 35. Section 63A-11-203 is amended to read:

63A-11-203. Child Welfare Parental Defense Fund -- Creation.

(1) There is created a [~~nonlapsing,~~] restricted special revenue fund known as the "Child Welfare Parental Defense Fund."

(2) Subject to availability, the director may make distributions from the fund as required in this chapter for the following purposes:

(a) to pay for the representation, costs, expert witness fees, and expenses of contracted parental defense attorneys who are under contract with the office to provide parental defense in child welfare cases for the indigent parent or parents that are the subject of a petition alleging abuse, neglect, or dependency;

(b) for administrative costs pursuant to this chapter; and

(c) for reasonable expenses directly related to the functioning of the office, including training and travel expenses.

(3) The fund consists of:

(a) appropriations made to the fund by the Legislature;

(b) interest and earnings from the investment of fund money;

(c) proceeds deposited by participating counties pursuant to Section 63A-11-204; and

(d) private contributions to the Child Welfare Parental Defense Fund.

(4) The state treasurer shall invest the money in the fund by following the procedures and

requirements of Title 51, Chapter 7, State Money Management Act.

(5) (a) If the director anticipates a deficit in the fund during any fiscal year:

(i) the director shall request an appropriation from the Legislature; and

(ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the deficit.

(b) If the anticipated deficit is not funded by the Legislature, the director may request an interim assessment to participating counties to fund the anticipated deficit.

Section 36. Section 63C-4-103 is amended to read:

63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of funds -- Uses of funds -- Reports.

(1) There is created a restricted account within the General Fund known as the Constitutional Defense Restricted Account.

(2) The account consists of money from the following revenue sources:

(a) money deposited to the account as required by Section 53C-3-203;

(b) voluntary contributions;

(c) money received by the Constitutional Defense Council from other state agencies; and

(d) appropriations made by the Legislature.

[~~(3) Funds in the account shall be nonlapsing.~~]

[~~(4)~~] (3) The account balance may not exceed $5,000,000.

[~~(5)~~] (4) Subject to Subsection [~~(6)~~] (5), the Legislature may annually appropriate money from the Constitutional Defense Restricted Account to one or more of the following:

(a) the Constitutional Defense Council to carry out its duties in Section 63C-4-102;

(b) the Public Lands Policy Coordinating Office to carry out its duties in Section 63J-4-603;

(c) the Office of the Governor, to be used only for the purpose of asserting, defending, or litigating state and local government rights under R.S. 2477, in accordance with a plan developed and approved as provided in Section 63C-4-104;

(d) a county or association of counties to assist counties, consistent with the purposes of the council, in pursuing issues affecting the counties; or

(e) the Office of the Attorney General, to be used only for:

(i) public lands counsel and assistance and litigation to the state or local governments including asserting, defending, or litigating state and local government rights under R.S. 2477 in accordance with a plan developed and approved as provided in Section 63C-4-104; or

(ii) an action filed in accordance with Section 67-5-29.

[~~(6)~~] (5) Money appropriated to the Constitutional Defense Restricted Account in accordance with Subsection 53C-3-203(4)(a), if appropriated by the Legislature, may only be expended by the agency to which it was appropriated to pay:

(a) the costs of an action filed in accordance with Section 67-5-29; and

(b) expenses associated with an action described in Subsection [~~(6)~~] (5)(a).

[~~(7)~~] (6) (a) The Constitutional Defense Council shall require that any entity that receives money from the Constitutional Defense Restricted Account provide financial reports and litigation reports to the Council.

(b) Nothing in this Subsection [~~(7)~~] (6) prohibits the council from closing a meeting under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying with Title 63G, Chapter 2, Government Records Access and Management Act.

Section 37. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2012.

(2) Subsection 53A-1-603(5) is repealed July 1, 2015.

(3) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2014.

(4) Subsection 53A-13-110(4) is repealed July 1, 2013.

[~~(5) Section 53A-17a-152 is repealed July 1, 2010.~~]

[~~(6)~~] (5) Section 53A-17a-162 is repealed July 1, 2012.

Section 38. Section 63J-1-312 is amended to read:

63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the [~~unreserved and undesignated~~] unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations[~~, investment earnings,~~] and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(B) [~~excluding the investment earnings for the fiscal year and~~] excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(B) [~~excluding the investment earnings for the fiscal year and~~] excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

(4) (a) If, at the close of any fiscal year, there appear to be insufficient monies to pay additional debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus monies sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.

(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (4)(a) unless and until it is appropriated by the Legislature.

(c) If, after calculating the amount for transfers to the General Fund Budget Reserve Account, the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (4)(a), the Division of Finance shall reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to cover the debt service hold back.

(d) Notwithstanding Subsection (3), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (4) before making any transfers to the General Fund Budget Reserve Account or any other designation or allocation of General Fund revenue surplus.

(5) Notwithstanding Subsection (3), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back the transfers to the State Disaster Recovery Restricted Account under Section 63J-1-314 does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to eliminate the operating deficit.

(6) The Legislature may appropriate monies from the General Fund Budget Reserve Account only to:

(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;

(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;

(c) pay retroactive tax refunds; or

(d) resolve an Education Fund budget deficit.

(7) Interest generated from investments of money in the General Fund Budget Reserve Account shall be deposited into the General Fund.

Section 39. Section 63J-1-313 is amended to read:

63J-1-313. Establishing an Education Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.

(1) As used in this section:

(a) "Education Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the Education Fund.

(b) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(c) "Education Fund revenue surplus" means a situation where actual Education Fund revenues collected in a completed fiscal year exceed the estimated revenues for the Education Fund in that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(d) "Operating deficit" means that, at the end of the fiscal year, the [~~unreserved and undesignated~~] unassigned fund balance in the Education Fund is less than zero.

(2) There is created within the Education Fund a restricted account to be known as the Education Fund Budget Reserve Account, which is designated to receive the legislative appropriations[~~, investment earnings,~~] and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is an Education Fund revenue surplus, the Division of Finance shall transfer 25% of the Education Fund revenue surplus to the Education Fund Budget Reserve Account.

(ii) If the transfer of 25% of the Education Fund revenue surplus to the Education Fund Budget Reserve Account under Subsection (3)(a)(i) would cause the balance in the account to exceed 7% of Education Fund appropriations for the fiscal year in which the Education Fund revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 7% of the Education Fund appropriations for the fiscal year in which the Education Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) before transferring from the Education Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(B) [~~excluding the investment earnings for the fiscal year and~~] excluding any direct legislative appropriation made to the Education Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if an Education Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the Education Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the Education Fund revenue surplus to the Education Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the Education Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 7% of Education Fund appropriations for the fiscal year in which the Education Fund revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 7% of Education Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) before transferring from the Education Fund revenue surplus any other year-end contingency

appropriations, year-end set-asides, or other year-end transfers required by law; and

(B) [~~excluding the investment earnings for the fiscal year and~~] excluding any direct legislative appropriation made to the Education Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the Education Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless specified otherwise in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the account within the past 10 years and have not yet been replaced.

(4) Notwithstanding Subsection (3), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the Division of Finance may reduce the transfer to the Education Fund Budget Reserve Account by the amount necessary to eliminate the operating deficit.

(5) The Legislature may appropriate money from the Education Fund Budget Reserve Account only to resolve an Education Fund budget deficit.

(6) Interest generated from investments of money in the Education Fund Budget Reserve Account shall be deposited into the Education Fund.

Section 40. Section 63J-1-314 is amended to read:

63J-1-314. Deposits related to the State Disaster Recovery Restricted Account.

(1) As used in this section, "operating deficit" means that, at the end of the fiscal year, the [~~unreserved and undesignated~~] unassigned fund balance in the General Fund is less than zero.

(2) Except as provided under Subsection (3), [~~beginning with the fiscal year ending June 30, 2007,~~] at the end of each fiscal year [~~and~~], the Division of Finance shall, after the transfer of [~~surplus~~] General Fund [~~revenues~~] revenue surplus has been made to the General Fund Budget Reserve Account as provided in Section 63J-1-312, [~~the Division of Finance shall deposit~~] transfer an amount into the State Disaster Recovery Restricted Account[~~,~~] created in Section 53-2-403, from the General Fund revenue surplus as defined in Section 63J-1-312, calculated by:

(a) determining the amount of [~~surplus~~] General Fund [~~revenues~~] revenue surplus after the transfer to the General Fund Budget Reserve Account under Section 63J-1-312 [~~that is unrestricted and undesignated~~];

(b) calculating an amount equal to the lesser of:

(i) 25% of the amount determined under Subsection (2)(a); or

(ii) 6% of the total of the General Fund appropriation amount for the fiscal year in which the surplus occurs; and

(c) adding to the amount calculated under Subsection (2)(b) an amount equal to the lesser of:

(i) 25% more of the amount described in Subsection (2)(a); or

(ii) the amount necessary to replace, in accordance with this Subsection (2)(c), any amount appropriated from the State Disaster Recovery Restricted Account within 10 fiscal years before the fiscal year in which the surplus occurs if:

(A) a surplus exists; and

(B) the Legislature appropriates money from the State Disaster Recovery Restricted Account that is not replaced by appropriation or as provided in this Subsection (2)(c).

(3) Notwithstanding Subsection (2)[~~: (a)~~], if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the Division of Finance shall reduce the transfer to the State Disaster Recovery Restricted Account by the amount necessary to eliminate the operating deficit[~~; and~~].

[~~(b) for FY 2008-09 and FY 2009-10 only, the Division of Finance shall suspend the deposit provided under Subsection (2) to the State Disaster Recovery Restricted Account created under Section 53-2-403.~~]

Section 41. Section 63J-1-602.1 is amended to read:

63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title 1 through Title 30.

(1) Appropriations made to the Legislature and its committees.

[~~(2) The Salinity Offset Fund created in Section 4-2-8.5.~~]

[~~(3) The Invasive Species Mitigation Account created in Section 4-2-8.7.~~]

[~~(4) The Rangeland Improvement Account created in Section 4-20-2.~~]

[~~(5)~~] (2) The Percent-for-Art Program created in Section 9-6-404.

[~~(6) The Centennial History Fund created in Section 9-8-604.~~]

[~~(7) The Uintah Basin Revitalization Fund, as provided in Section 9-10-108.~~]

[~~(8) The Navajo Revitalization Fund created in Section 9-11-104.~~]

[~~(9)~~] (3) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

[~~(10) The Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.~~]

[~~(11)~~] (4) An appropriation made to the Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

[~~(12)~~] (5) Award money under the Crime Reduction Assistance Program, as provided under Section 24-1-19.

[~~(13)~~] (6) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.

(7) State funds appropriated for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

[~~(14)~~] (8) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.

Section 42. Section 63J-1-602.2 is amended to read:

63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.

(1) Appropriations from the Technology Development Restricted Account created in Section 31A-3-104.

(2) Appropriations from the Criminal Background Check Restricted Account created in Section 31A-3-105.

(3) Appropriations from the Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(4) Appropriations from the Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

[~~(5) The fund for operating the state's Federal Health Care Tax Credit Program, as provided in Section 31A-38-104.~~]

[~~(6) The Special Administrative Expense Account created in Section 35A-4-506.~~]

[~~(7)~~] (5) Funding for a new program or agency that is designated as nonlapsing under Section 36-24-101.

[~~(8) The~~] (6) Appropriations from the Oil and Gas Conservation Account created in Section 40-6-14.5.

[~~(9) The Off-Highway Access and Education Restricted Account created in Section 41-22-19.5.~~]

Section 43. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

[~~(1) Certain funds associated with the Law Enforcement Operations Account, as provided in Section 51-9-411.~~]

[~~(2) The Public Safety Honoring Heroes Restricted Account created in Section 53-1-118.~~]

[~~(3)~~] (1) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2-107.

[~~(4)~~] (2) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

[~~(5)~~] (3) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

[~~(6) The~~] (4) Appropriations from the DNA Specimen Restricted Account created in Section 53-10-407.

[~~(7)~~] (5) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

[~~(8)~~] (6) Certain funds appropriated from the Uniform School Fund to the State Board of Education for new teacher bonus and performance-based compensation plans, as provided in Section 53A-17a-148.

[~~(9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for implementation of proposals to improve mathematics achievement test scores, as provided in Section 53A-17a-152.~~]

[~~(10) The School Building Revolving Account created in Section 53A-21-401.~~]

[~~(11)~~] (7) Money received by the State Office of Rehabilitation for the sale of certain products or services, as provided in Section 53A-24-105.

[~~(12)~~] (8) The State Board of Regents, as provided in Section 53B-6-104.

[~~(13)~~] (9) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

[~~(14)~~] (10) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

[~~(15)~~] (11) Certain surcharges on residence and business telecommunications access lines imposed by the Public Service Commission, as provided in Section 54-8b-10.

[~~(16)~~] (12) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

[~~(17) The Nurse Education and Enforcement Account created in Section 58-31b-103.~~]

[~~(18) The Certified Nurse Midwife Education and Enforcement Account created in Section 58-44a-103.~~]

[~~(19)~~] (13) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

[~~(20) The Professional Geologist Education and Enforcement Account created in Section 58-76-103.~~]

[~~(21) Certain money in the Water Resources Conservation and Development Fund, as provided in Section 59-12-103.~~]

Section 44. Section 63J-1-602.4 is amended to read:

63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.

[~~(1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.~~]

[~~(2)~~] (1) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

[~~(3)~~] (2) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

[~~(4)~~] (3) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

[~~(5)~~] (4) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

[~~(6)~~] (5) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

[~~(7) Certain donations to the Division of Substance Abuse and Mental Health, as provided in Section 62A-15-103.~~]

[~~(8) Assessments for DUI violations that are forwarded to an account created by a county treasurer, as provided in Section 62A-15-503.~~]

[~~(9) The Risk Management Fund created under Section 63A-4-201.~~]

[~~(10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.~~]

[~~(11) The Constitutional Defense Restricted Account created in Section 63C-4-103.~~]

[~~(12)~~] (6) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

[~~(13)~~] (7) Funding for the Medical Education Program administered by the Medical Education Council, as provided in Section 63C-8-102.

[~~(14)~~] (8) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63C-11-301.

[~~(15)~~] (9) Funds appropriated or collected for publishing the Division of Administrative Rules' publications, as provided in Section 63G-3-402.

[~~(16)~~] (10) Money received by the military installation development authority, as provided in Section 63H-1-504.

[~~(17)~~] (11) The appropriation to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Section 63M-1-416.

[~~(18) The Tourism Marketing Performance Account, as provided in Section 63M-1-1406.~~]

[~~(19) Certain money in the Development for Disadvantaged Rural Communities Restricted Account, as provided in Section 63M-1-2003.~~]

[~~(20)~~] (12) Appropriations to the Utah Science Technology and Research Governing Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.

[~~(21) Certain money in the Rural Broadband Service Account, as provided in Section 63M-1-2303.~~]

Section 45. Section 63J-1-602.5 is amended to read:

63J-1-602.5. List of nonlapsing funds and accounts -- Title 64 and thereafter.

(1) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).

[~~(2) The Sovereign Lands Management account created in Section 65A-5-1.~~]

[~~(3)~~] (2) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

[~~(4)~~] (3) The Department of Human Resource Management user training program, as provided in Section 67-19-6.

[~~(5)~~] (4) Funds for the University of Utah Poison Control Center program, as provided in Section 69-2-5.5.

[~~(6) Appropriations to the Transportation Corridor Preservation Revolving Loan Fund, as provided in Section 72-2-117.~~]

[~~(7) Appropriations to the Local Transportation Corridor Preservation Fund, as provided in Section 72-2-117.5.~~]

[~~(8) Appropriations to the Tollway Special Revenue Fund, as provided in Section 72-2-120.~~]

[~~(9) Appropriations to the Aeronautics Construction Revolving Loan Fund, as provided in Section 72-2-122.~~]

[~~(10)~~] (5) The Traffic Noise Abatement Program created in Section 72-6-112.

[~~(11)~~] (6) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.

[~~(12) Certain monies appropriated to increase the carrying capacity of the Jordan River that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1.~~]

[~~(13) Certain funds in the Water Development and Flood Mitigation Reserve Account, as provided in Section 73-10e-1.~~]

[~~(14)~~] (7) Certain monies appropriated from the Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

[~~(15) The Lake Powell Pipeline Project Operation and Maintenance Fund created in Section 73-28-404.~~]

[~~(16)~~] (8) Certain funds appropriated for compensation for special prosecutors, as provided in Section 77-10a-19.

[~~(17) The Indigent Aggravated Murder Defense Trust Fund created in Section 77-32-601.~~]

[~~(18) The Indigent Felony Defense Trust Fund created in Section 77-32-701.~~]

[~~(19)~~] (9) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

[~~(20)~~] (10) A state rehabilitative employment program, as provided in Section 78A-6-210.

[~~(21)~~] (11) The [~~account~~] money for the Utah Geological Survey, as provided in Section 79-3-401.

[~~(22)~~] (12) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, Jordan River State Park, and Green River State Park, as provided under Section 79-4-403.

[~~(23)~~] (13) Certain funds received by the Division of Parks and Recreation from the sale or disposal of buffalo, as provided under Section 79-4-1001.

[~~(24)~~] (14) The Bonneville Shoreline Trail Program created under Section 79-5-503.

Section 46. Section 63M-1-905 is amended to read:

63M-1-905. Loans, grants, and assistance -- Repayment -- Earned credits.

(1) (a) A company that qualifies under Section 63M-1-906 may receive loans, grants, or other financial assistance from the Industrial Assistance Account for expenses related to establishment, relocation, or development of industry in Utah.

(b) A company creating an economic impediment that qualifies under Section 63M-1-908 may in accordance with this part receive loans, grants, or other financial assistance from the restricted account for the expenses of the company creating an economic impediment related to:

(i) relocation to a rural area in Utah of the company creating an economic impediment; and

(ii) the siting of a replacement company.

(c) An entity offering an economic opportunity that qualifies under Section 63M-1-909 may:

(i) receive loans, grants, or other financial assistance from the restricted account for expenses related to the establishment, relocation, retention, or development of industry in the state; and

(ii) include infrastructure or other economic development precursor activities that act as a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of the state's tax base.

(2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the restricted account.

(b) Loans made under Subsection (2)(a) shall be structured so the intended repayment or return to the state, including cash or credit, equals at least the amount of the assistance together with an annual interest charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the restricted account shall be made only after the administrator has determined that the company has satisfied the conditions upon which the payment or earned credit was based.

(3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a system of earned credits that may be used to support grant payments or in lieu of cash repayment of a restricted account loan obligation.

(ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(b) (i) The administrator shall provide for a system of credits to be used to support grant payments or in lieu of cash repayment of a restricted account loan when loans are made to a company creating an economic impediment.

(ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(4) (a) A cash loan repayment or other cash recovery from a company receiving assistance under this section, including interest, shall be deposited into the restricted account.

(b) The administrator and the Division of Finance shall determine the manner of recognizing and accounting for the earned credits used in lieu of loan repayments or to support grant payments as provided in Subsection (3).

(5) (a) (i) At the end of each fiscal year, [~~the unrestricted, undesignated~~] the Division of Finance shall set aside the balance of the General Fund [~~balance~~] revenue surplus as defined in Section 63J-1-312 after the transfers [~~of surplus~~] of General Fund [~~revenues~~] revenue surplus described in [~~this~~] Subsection [~~(5)(a) shall be earmarked~~] (5)(b) to the Industrial Assistance Account in an amount equal to any credit that has accrued under this part.

(ii) The [~~earmark~~] set aside under Subsection (5)(a)(i) shall be capped at $50,000,000, at which time no subsequent contributions may be made and any interest accrued above the $50,000,000 cap shall be deposited into the General Fund.

(b) The [~~earmark~~] set aside required by Subsection (5)(a) shall be made after the transfer of [~~surplus~~] General Fund [~~revenues~~] revenue surplus is made:

(i) to the General Fund Budget Reserve Account as provided in Section 63J-1-312; and

(ii) [~~beginning with the fiscal year ending June 30, 2007,~~] to the State Disaster Recovery Restricted Account as provided in Section 63J-1-314.

(c) These credit amounts may not be used for purposes of the restricted account as provided in this part until appropriated by the Legislature.

Section 47. Section 63M-1-1406 is amended to read:

63M-1-1406. Tourism Marketing Performance Account.

(1) There is created within the General Fund a restricted account known as the Tourism Marketing Performance Account.

(2) The account shall be administered by the office for the purposes listed in Subsection (5).

(3) (a) The account shall earn interest.

(b) All interest earned on account monies shall be deposited into the account.

[~~(c) Monies in the account are nonlapsing.~~]

(4) The account shall be funded by appropriations made to the account by the Legislature in accordance with this section.

(5) The director may use account monies appropriated to the office to pay for the statewide advertising, marketing, and branding campaign for promotion of the state as conducted by the office.

(6) (a) For the fiscal year beginning July 1, 2007, the director shall allocate 10% of the account monies appropriated to the office to be distributed to a sports organization for advertising, marketing, branding, and promoting Utah in attracting sporting events into the state as determined by the office.

(b) For a fiscal year beginning on or after July 1, 2008, the amount distributed under Subsection (6)(a) shall be indexed from the July 1, 2007 fiscal year to reflect a percent increase or decrease of monies set aside into the account as compared to the previous fiscal year.

[~~(c) The monies distributed under Subsections (6)(a) and (b) are nonlapsing.~~]

[~~(d)~~] (c) The office shall provide for an annual accounting to the office by a sports organization of the use of monies it receives under Subsection (6)(a) or (b).

[~~(e)~~] (d) For purposes of this Subsection (6), "sports organization" means an organization that is:

(i) exempt from federal income taxation in accordance with Section 501(c)(3), Internal Revenue Code; and

(ii) created to foster national and international amateur sports competitions to be held in the state and sports tourism throughout the state, to include advertising, marketing, branding, and promoting Utah for the purpose of attracting sporting events into the state.

(7) [~~(a) Monies set aside~~] Money deposited into the account [~~shall be as follows: (i) for the fiscal year beginning July 1, 2005 only, an amount appropriated in Section 7 of this bill; (ii) for the fiscal year beginning July 1, 2006: (A) the beginning nonlapsing appropriation balances, if any, in the Tourism Marketing Performance Account; (B) any legislative appropriation from the sales and use tax revenue increases identified in Subsection (8); and (C) any appropriation made by the Legislature from the General Fund to the account in an appropriations bill; and (iii) for the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, a $1,000,000 reduction in the prior year's appropriation sources other than the~~] shall consist of a legislative appropriation from the cumulative sales and use tax revenue increases identified in Subsection (8)[~~, plus a legislative appropriation from the cumulative sales and use tax revenue increases identified in Subsection (8)~~], plus any appropriation made by the Legislature.

[~~(b) Monies in the account are nonlapsing.~~]

(8) (a) In fiscal years 2006 through 2015, a portion of the state sales and use tax revenues determined under this Subsection (8) shall be certified as a set-aside for the account by the State Tax Commission and reported to the Office of Legislative Fiscal Analyst.

(b) The State Tax Commission shall determine the set-aside under this Subsection (8) in each fiscal year by applying the following formula: if the increase in the state sales and use tax revenues derived from the retail sales of tourist-oriented goods and services in the fiscal year two years prior to the fiscal year in which the set-aside is to be made for the account is at least 3% over the state sales and use tax revenues derived from the retail sales of tourist-oriented goods and services generated in the fiscal year three years prior to the fiscal year in which the set-aside is to be made, an amount equal to 1/2 of the state sales and use tax revenues generated above the 3% increase shall be calculated by the commission and set aside by the state treasurer for appropriation to the account.

(c) Total monies to be appropriated to the account in any fiscal year under Subsections (8)(a) and (b) may not exceed the amount in the account under this section in the fiscal year immediately preceding the current fiscal year by more than $3,000,000.

(d) As used in this Subsection (8), "sales of tourism-oriented goods and services" are those sales by businesses registered with the State Tax

Commission under the following codes of the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) NAICS Code 453 Miscellaneous Store Retailers;

(ii) NAICS Code 481 Passenger Air Transportation;

(iii) NAICS Code 487 Scenic and Sightseeing Transportation;

(iv) NAICS Code 711 Performing Arts, Spectator Sports and Related Industries;

(v) NAICS Code 712 Museums, Historical Sites and Similar Institutions;

(vi) NAICS Code 713 Amusement, Gambling and Recreation Industries;

(vii) NAICS Code 721 Accommodations;

(viii) NAICS Code 722 Food Services and Drinking Places;

(ix) NAICS Code 4483 Jewelry, Luggage, and Leather Goods Stores;

(x) NAICS Code 4853 Taxi and Limousine Service;

(xi) NAICS Code 4855 Charter Bus;

(xii) NAICS Code 5615 Travel Arrangement and Reservation Services;

(xiii) NAICS Code 44611 Pharmacies and Drug Stores;

(xiv) NAICS Code 45111 Sporting Goods Stores;

(xv) NAICS Code 45112 Hobby Toy and Game Stores;

(xvi) NAICS Code 45121 Book Stores and News Dealers;

(xvii) NAICS Code 445120 Convenience Stores without Gas Pumps;

(xviii) NAICS Code 447110 Gasoline Stations with Convenience Stores;

(xix) NAICS Code 447190 Other Gasoline Stations;

(xx) NAICS Code 532111 Passenger Car Rental; and

(xxi) NAICS Code 532292 Recreational Goods Rental.

(e) [~~For the fiscal year beginning on July 1, 2009,~~] The Division of Finance shall for each fiscal year transfer the first $6,000,000 of ongoing [~~monies~~] money in the account [~~shall be transferred~~] to the General Fund.

Section 48. Section 63M-1-2003 is amended to read:

63M-1-2003. Creation of Business Development for Disadvantaged Rural Communities Restricted Account -- Interest -- Costs of administering the restricted account -- Deposit of certain money and interest into the General Fund.

(1) There is created within the General Fund the Business Development for Disadvantaged Rural Communities Restricted Account.

(2) The restricted account shall be funded by:

(a) money appropriated to the account by the Legislature;

(b) money received by the office as:

(i) repayment of a loan that the board grants to an eligible county under this part; and

(ii) interest on a loan described in Subsection (2)(b)(i); and

(c) the interest described in Subsection (3).

(3) (a) The restricted account shall earn interest.

(b) The interest described in Subsection (3)(a) shall be deposited into the account.

(4) Upon appropriation by the Legislature, the money and interest deposited into the restricted account in accordance with this section may be expended:

(a) by the board to award grants or loans to eligible counties as provided in this part; and

(b) to cover the costs of administering this part:

(i) in an amount not to exceed $5,000 in any fiscal year; and

(ii) including the costs of providing staff support to administer this part.

[~~(5) (a) Except as provided in Subsection (5)(b), the money and interest deposited into the restricted account in accordance with this section are nonlapsing.~~]

[~~(b) Notwithstanding Subsection (5)(a), the~~]

(5) The Division of Finance shall deposit any money and interest in the restricted account on July 1, 2015, into the General Fund.

Section 49. Section 63M-1-2303 is amended to read:

63M-1-2303. Rural Broadband Service Account created -- Interest -- Costs.

(1) There is created a restricted account within the General Fund known as the "Rural Broadband Service Account."

(2) The restricted account shall be funded by money appropriated by the Legislature.

(3) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(4) Upon appropriation by the Legislature, the money deposited into the restricted account in accordance with this section may be expended:

(a) by the director with the advice of the board to award grants to providers as provided in this part; and

(b) to cover the costs of administering this part in an amount during any fiscal year not to exceed 2% of the restricted account balance at the start of any fiscal year.

[~~(5) (a) Except as provided in Subsection (5)(b), the money deposited into the restricted account in accordance with this section are nonlapsing.~~]

[~~(b) Notwithstanding Subsection (5)(a), the Division of Finance shall deposit any money in the restricted account into the General Fund on July 1, 2010.~~]

Section 50. Section 65A-5-1 is amended to read:

65A-5-1. Sovereign Lands Management Account -- Creation -- Contents -- Appropriation to fund division expenses.

(1) There is created within the General Fund a restricted account known as the Sovereign Lands Management Account.

(2) The account shall consist of the following:

(a) all revenues derived from sovereign lands; and

(b) that portion of all revenues derived from mineral leases on other lands managed by the division necessary to recover management costs.

(3) All expenditures of the division relating directly to the management of state lands shall be funded by appropriation by the Legislature from the Sovereign Lands Management Account or other sources.

[~~(4) As of June 30 of each calendar year, the unappropriated portion of the Sovereign Lands Management Account from the fiscal year ending June 30 of that calendar year shall be nonlapsing and available for appropriation by the Legislature.~~]

Section 51. Section 72-2-117 is amended to read:

72-2-117. Transportation Corridor Preservation Revolving Loan Fund -- Distribution -- Repayment -- Rulemaking.

(1) There is created the Transportation Corridor Preservation Revolving Loan Fund within the Transportation Fund.

(2) The fund shall be funded from the following sources:

(a) motor vehicle rental tax imposed under Section 59-12-1201;

(b) appropriations made to the fund by the Legislature;

(c) contributions from other public and private sources for deposit into the fund;

(d) interest earnings on cash balances;

(e) all monies collected for repayments and interest on fund monies;

(f) all monies collected from rents and sales of real property acquired with fund monies; and

(g) proceeds from general obligation bonds, revenue bonds, or other obligations as authorized by Title 63B, Bonds.

[~~(3) All monies appropriated to the Transportation Corridor Preservation Revolving Loan Fund are nonlapsing.~~]

[~~(4)~~] (3) (a) The commission shall authorize the expenditure of fund monies to allow the department to acquire real property or any interests in real property for state, county, and municipal transportation corridors subject to:

(i) monies available in the fund;

(ii) rules made under Subsection [~~(7)~~] (6); and

(iii) Subsection [~~(9)~~] (8).

(b) Fund monies may be used to pay interest on debts incurred in accordance with this section.

[~~(5)~~] (4) Administrative costs for transportation corridor preservation shall be paid from the fund.

[~~(6)~~] (5) The department:

(a) may apply to the commission under this section for monies from the Transportation Corridor Preservation Revolving Loan Fund for a specified transportation corridor project, including for county and municipal projects; and

(b) shall repay the fund monies authorized for the project to the fund as required under Subsection [~~(7)~~] (6).

[~~(7)~~] (6) The commission shall:

(a) administer the Transportation Corridor Preservation Revolving Loan Fund to:

(i) preserve transportation corridors;

(ii) promote long-term statewide transportation planning;

(iii) save on acquisition costs; and

(iv) promote the best interests of the state in a manner which minimizes impact on prime agricultural land;

(b) prioritize fund monies based on considerations, including:

(i) areas with rapidly expanding population;

(ii) the willingness of local governments to complete studies and impact statements that meet department standards;

(iii) the preservation of corridors by the use of local planning and zoning processes;

(iv) the availability of other public and private matching funds for a project; and

(v) the cost-effectiveness of the preservation projects;

(c) designate high priority corridor preservation projects in cooperation with a metropolitan planning organization;

(d) administer the program for the purposes provided in this section;

(e) prioritize fund monies in accordance with this section; and

(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(i) the procedures for the awarding of fund monies;

(ii) the procedures for the department to apply for transportation corridor preservation monies for projects; and

(iii) repayment conditions of the monies to the fund from the specified project funds.

[~~(8)~~] (7) (a) The proceeds from any bonds or other obligations secured by revenues of the Transportation Corridor Preservation Revolving Loan Fund shall be used for:

(i) the acquisition of real property in hardship cases; and

(ii) any of the purposes authorized for funds in the Transportation Corridor Preservation Revolving Loan Fund under this section.

(b) The commission shall pledge the necessary part of the revenues of the Transportation Corridor Preservation Revolving Loan Fund to the payment of principal of and interest on the bonds or other obligations.

[~~(9)~~] (8) (a) The department may not apply for monies under this section unless the highway authority has an access management policy or ordinance in effect that meets the requirements under Subsection [~~(9)~~] (8)(b).

(b) The access management policy or ordinance shall:

(i) be for the purpose of balancing the need for reasonable access to land uses with the need to preserve the smooth flow of traffic on the highway system in terms of safety, capacity, and speed; and

(ii) include provisions:

(A) limiting the number of conflict points at driveway locations;

(B) separating conflict areas;

(C) reducing the interference of through traffic;

(D) spacing at-grade signalized intersections; and

(E) providing for adequate on-site circulation and storage.

(c) The department shall develop a model access management policy or ordinance that meets the requirements of this Subsection [~~(9)~~] (8) for the benefit of a county or municipality under this section.

[~~(10)~~] (9) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing a corridor preservation advisory council.

(b) The corridor preservation advisory council shall:

(i) assist with and help coordinate the corridor preservation efforts of the department and local governments;

(ii) provide recommendations and priorities concerning corridor preservation and the use of fund monies to the department and to the commission; and

(iii) include members designated by each metropolitan planning organization in the state to represent local governments that are involved with corridor preservation through official maps and planning.

Section 52. Section 72-2-117.5 is amended to read:

72-2-117.5. Definitions -- Local Transportation Corridor Preservation Fund -- Disposition of fund monies.

(1) As used in this section:

(a) "Council of governments" means a decision-making body in each county composed of the county governing body and the mayors of each municipality in the county.

(b) "Metropolitan planning organization" has the same meaning as defined in Section 72-1-208.5.

(2) There is created the Local Transportation Corridor Preservation Fund within the Transportation Fund.

(3) The fund shall be funded from the following sources:

(a) a local option highway construction and transportation corridor preservation fee imposed under Section 41-1a-1222;

(b) appropriations made to the fund by the Legislature;

(c) contributions from other public and private sources for deposit into the fund;

(d) all monies collected from rents and sales of real property acquired with fund monies;

(e) proceeds from general obligation bonds, revenue bonds, or other obligations issued as authorized by Title 63B, Bonds;

(f) the portion of the sales and use tax described in Subsection 59-12-2217(2)(b) and required by Subsection 59-12-2217(8)(a) to be deposited into the fund; and

(g) sales and use tax revenues deposited into the fund in accordance with Section 59-12-2218.

(4) (a) The fund shall earn interest.

(b) All interest earned on fund monies shall be deposited into the fund.

[~~(c) All monies appropriated to the Local Transportation Corridor Preservation Fund are nonlapsing.~~]

[~~(d)~~] (c) The State Tax Commission shall provide the department with sufficient data for the department to allocate the revenues:

(i) provided under Subsection (3)(a) to each county imposing a local option highway construction and transportation corridor preservation fee under Section 41-1a-1222;

(ii) provided under Subsection 59-12-2217(2)(b) to each county imposing a county option sales and use tax for transportation; and

(iii) provided under Subsection (3)(g) to each county of the second class or city or town within a county of the second class that imposes the sales and use tax authorized by Section 59-12-2218.

[~~(e)~~] (d) (i) The department shall annually allocate the interest earned on fund monies to each county based on the proportionate amount of interest earned on each county's allocation of funds under Subsection (4)[~~(d)~~](c) on an average monthly balance basis.

(ii) The initial annual allocation of fund interest shall include all interest earned on fund monies since the creation of the fund.

[~~(f)~~] (e) The monies allocated under Subsection (4)[~~(d)~~](c):

(i) shall be used for the purposes provided in this section for each county, city, or town; and

(ii) are allocated to each county, city or town as provided in this section:

(A) with the condition that the state will not be charged for any asset purchased with the monies allocated under Subsections (4)[~~(d)~~](c) and [~~(e)~~] (d); and

(B) are considered a local matching contribution for the purposes described under Section 72-2-123 if used on a state highway.

[~~(g)~~] (f) Administrative costs of the department to implement this section shall be paid from the fund.

(5) (a) The department shall authorize the expenditure of fund monies to allow a highway authority to acquire real property or any interests in real property for state, county, and municipal highway corridors subject to:

(i) monies available in the fund to each county under Subsections (4)[~~(d)~~](c) and [~~(e)~~] (d); and

(ii) the provisions of this section.

(b) Fund monies may be used to pay interest on debts incurred in accordance with this section.

(c) (i) (A) Fund monies may be used to pay maintenance costs of properties acquired under this section but limited to a total of 5% of the purchase price of the property.

(B) Any additional maintenance cost shall be paid from funds other than under this section.

(C) Revenue generated by any property acquired under this section is excluded from the limitations under this Subsection (5)(c)(i).

(ii) Fund monies may be used to pay direct costs of acquisition of properties acquired under this section.

(d) Fund monies allocated under Subsections (4)[~~(d)~~](c) and [~~(e)~~] (d) may be used by a county highway authority for countywide transportation planning if:

(i) the county is not included in a metropolitan planning organization;

(ii) the transportation planning is part of the county's continuing, cooperative, and comprehensive process for transportation planning, corridor preservation, right-of-way acquisition, and project programming;

(iii) no more than four years allocation every 20 years to each county is used for transportation planning under this Subsection (5)(d); and

(iv) the county otherwise qualifies to use the fund monies as provided under this section.

(e) (i) Subject to Subsection (11), fund monies allocated under Subsections (4)[~~(d)~~](c) and [~~(e)~~] (d) may be used by a county highway authority for transportation corridor planning that is part of the corridor elements of an ongoing work program of transportation projects.

(ii) The transportation corridor planning under Subsection (5)(e)(i) shall be under the direction of:

(A) the metropolitan planning organization if the county is within the boundaries of a metropolitan planning organization; or

(B) the department if the county is not within the boundaries of a metropolitan planning organization.

(6) (a) (i) The Local Transportation Corridor Preservation Fund shall be used to preserve highway corridors, promote long-term statewide transportation planning, save on acquisition costs, and promote the best interests of the state in a manner which minimizes impact on prime agricultural land.

(ii) The Local Transportation Corridor Preservation Fund shall only be used to preserve a highway corridor that is right-of-way:

(A) in a county of the first or second class for a:

(I) state highway;

(II) a principal arterial highway as defined in Section 72-4-102.5;

(III) a minor arterial highway as defined in Section 72-4-102.5; or

(IV) a collector highway in an urban area as defined in Section 72-4-102.5; or

(B) in a county of the third, fourth, fifth, or sixth class for a:

(I) state highway;

(II) a principal arterial highway as defined in Section 72-4-102.5;

(III) a minor arterial highway as defined in Section 72-4-102.5;

(IV) a major collector highway as defined in Section 72-4-102.5; or

(V) a minor collector road as defined in Section 72-4-102.5.

(iii) The Local Transportation Corridor Preservation Fund may not be used for a highway corridor that is primarily a recreational trail as defined under Section 79-5-102.

(b) (i) The department shall develop and implement a program to educate highway authorities on the objectives, application process, use, and responsibilities of the Local Transportation Corridor Preservation Fund as provided under this section to promote the most efficient and effective use of fund monies including priority use on designated high priority corridor preservation projects.

(ii) The department shall develop a model transportation corridor property acquisition policy or ordinance that meets federal requirements for the benefit of a highway authority to acquire real property or any interests in real property under this section.

(c) The department shall authorize the expenditure of fund monies after determining that the expenditure is being made in accordance with this section from applications that are:

(i) made by a highway authority;

(ii) endorsed by the council of governments; and

(iii) for a right-of-way purchase for a highway authorized under Subsection (6)(a)(ii).

(7) (a) (i) A council of governments shall establish a council of governments endorsement process which includes prioritization and application procedures for use of the monies allocated to each county under this section.

(ii) The endorsement process under Subsection (7)(a)(i) may include review or endorsement of the preservation project by the:

(A) metropolitan planning organization if the county is within the boundaries of a metropolitan planning organization; or

(B) the department if the county is not within the boundaries of a metropolitan planning organization.

(b) All fund monies shall be prioritized by each highway authority and council of governments based on considerations, including:

(i) areas with rapidly expanding population;

(ii) the willingness of local governments to complete studies and impact statements that meet department standards;

(iii) the preservation of corridors by the use of local planning and zoning processes;

(iv) the availability of other public and private matching funds for a project;

(v) the cost-effectiveness of the preservation projects;

(vi) long and short-term maintenance costs for property acquired; and

(vii) whether the transportation corridor is included as part of:

(A) the county and municipal master plan; and

(B) (I) the statewide long range plan; or

(II) the regional transportation plan of the area metropolitan planning organization if one exists for the area.

(c) The council of governments shall:

(i) establish a priority list of highway corridor preservation projects within the county;

(ii) submit the list described in Subsection (7)(c)(i) to the county's legislative body for approval; and

(iii) obtain approval of the list described in Subsection (7)(c)(i) from a majority of the members of the county legislative body.

(d) A county's council of governments may only submit one priority list described in Subsection (7)(c)(i) per calendar year.

(e) A county legislative body may only consider and approve one priority list described in Subsection (7)(c)(i) per calendar year.

(8) (a) Unless otherwise provided by written agreement with another highway authority, the highway authority that holds the deed to the property is responsible for maintenance of the property.

(b) The transfer of ownership for property acquired under this section from one highway authority to another shall include a recorded deed for the property and a written agreement between the highway authorities.

(9) (a) The proceeds from any bonds or other obligations secured by revenues of the Local Transportation Corridor Preservation Fund shall be used for the purposes authorized for funds under this section.

(b) The highway authority shall pledge the necessary part of the revenues of the Local Transportation Corridor Preservation Fund to the payment of principal and interest on the bonds or other obligations.

(10) (a) A highway authority may not apply for monies under this section to purchase a right-of-way for a state highway unless the highway authority has:

(i) a transportation corridor property acquisition policy or ordinance in effect that meets federal requirements for the acquisition of real property or any interests in real property under this section; and

(ii) an access management policy or ordinance in effect that meets the requirements under Subsection 72-2-117[~~(9)~~](8).

(b) The provisions of Subsection (10)(a)(i) do not apply if the highway authority has a written agreement with the department for the acquisition of real property or any interests in real property under this section.

(11) (a) The department shall, in expending or authorizing the expenditure of fund monies, ensure to the extent possible that the fund monies allocated to a city or town in accordance with Subsection (4) are expended:

(i) to fund a project or service as allowed by this section within the city or town to which the fund monies are allocated;

(ii) to pay debt service, principal, or interest on a bond or other obligation as allowed by this section if that bond or other obligation is:

(A) secured by monies allocated to the city or town; and

(B) issued to finance a project or service as allowed by this section within the city or town to which the fund monies are allocated;

(iii) to fund transportation planning as allowed by this section within the city or town to which the fund monies are allocated; or

(iv) for another purpose allowed by this section within the city or town to which the fund monies are allocated.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to implement the requirements of Subsection (11)(a).

Section 53. Section 72-2-120 is amended to read:

72-2-120. Tollway Special Revenue Fund -- Revenue.

(1) There is created a special revenue fund within the Transportation Fund known as the "Tollway Special Revenue Fund."

(2) The fund shall be funded from the following sources:

(a) tolls collected by the department under Section 72-6-118;

(b) funds received by the department through a tollway development agreement under Section 72-6-203;

(c) appropriations made to the fund by the Legislature;

(d) contributions from other public and private sources for deposit into the fund;

(e) interest earnings on cash balances; and

(f) money collected for repayments and interest on fund money.

[~~(3) Money appropriated to the fund is nonlapsing.~~]

[~~(4)~~] (3) The Division of Finance shall create a subaccount for each tollway as defined in Section 72-6-118.

[~~(5)~~] (4) The commission may authorize the money deposited into the fund to be spent by the department to establish and operate tollways and related facilities, including design, construction, reconstruction, operation, maintenance, enforcement, impacts from tollways, and the acquisition of right-of-way.

Section 54. Section 72-2-122 is amended to read:

72-2-122. Aeronautics Construction Revolving Loan Fund -- Distribution -- Repayment -- Rulemaking.

(1) There is created the Aeronautics Construction Revolving Loan Fund within the Transportation Fund.

(2) The fund shall include monies from the following sources:

(a) appropriations made to the fund by the Legislature;

(b) contributions from other public and private sources for deposit into the fund;

(c) interest earnings on cash balances;

(d) all monies collected for repayments and interest on fund monies; and

(e) proceeds from revenue bonds or other obligations issued in accordance with Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, and Title 63B, Bonds.

[~~(3) All monies appropriated to the Aeronautics Construction Revolving Loan Fund are nonlapsing.~~]

[~~(4)~~] (3) (a) The commission shall authorize the expenditure of fund monies for construction, major reconstruction, major renovation, or property acquisition of airports and airport runways for state, county, and municipal airports subject to:

(i) monies available in the fund; and

(ii) rules made under Subsection [~~(7)~~] (6).

(b) Fund monies may be used to pay interest on debts incurred in accordance with this section.

[~~(5)~~] (4) Administrative costs of the Aeronautics Construction Revolving Loan Fund shall be paid from the fund.

[~~(6)~~] (5) The Operations Division:

(a) may apply to the commission under this section for monies from the Aeronautics Construction Revolving Loan Fund for a specified aeronautics project, including for county and municipal projects; and

(b) shall repay the fund monies authorized for the project to the fund as required under Subsection [~~(7)~~] (6).

[~~(7)~~] (6) The commission shall:

(a) administer the Aeronautics Construction Revolving Loan Fund to promote long-term statewide aeronautics transportation;

(b) prioritize fund monies based on considerations, including:

(i) areas with rapidly expanding population;

(ii) the willingness of local governments to:

(A) complete studies and impact statements that meet department standards; and

(B) preserve long-term airport operations by the use of local planning and zoning processes;

(iii) the availability of other public and private matching funds for a project; and

(iv) the cost-effectiveness of the projects; and

(c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(i) the procedures for the awarding of fund monies;

(ii) the procedures for the Operations Division to apply for Aeronautics Construction Revolving Loan Fund monies for projects; and

(iii) repayment schedules and conditions of replacing the monies back into the fund.

[~~(8)~~] (7) For loans made under this section to a county or municipal airport, the Division of Finance shall:

(a) collect and account for a loan made in accordance with this section; and

(b) have custody of all loan documents evidencing indebtedness of the Aeronautics Construction Revolving Loan Fund, including all:

(i) notes; and

(ii) contracts.

[~~(9)~~] (8) (a) The proceeds from the revenue bonds or other obligations issued on revenues of the Aeronautics Construction Revolving Loan Fund shall be used for the purposes authorized for funds under this section.

(b) The commission shall pledge the necessary part of the revenues of the Aeronautics Construction Revolving Loan Fund to the payment of principal of and interest on the revenue bonds or other obligations.

Section 55. Section 72-3-109 is amended to read:

72-3-109. Division of responsibility with respect to state highways in cities and towns.

(1) Except as provided in Subsection (3), the jurisdiction and responsibility of the department and the municipalities for state highways within municipalities is as follows:

(a) The department has jurisdiction over and is responsible for the construction and maintenance of:

(i) the portion of the state highway located between the back of the curb on either side of the state highway; or

(ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

(b) The department may widen or improve state highways within municipalities.

(c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is responsible for construction and maintenance of the right-of-way.

(ii) If a municipality grants permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the right-of-way under its jurisdiction:

(A) the permission shall contain the condition that any installation will be removed from the right-of-way at the request of the municipality; and

(B) the municipality shall cause any installation to be removed at the request of the department when the department finds the removal necessary:

(I) to eliminate a hazard to traffic safety;

(II) for the construction and maintenance of the state highway; or

(III) to meet the requirements of federal regulations.

(d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated, reimbursement shall be made for the relocation as provided for in Section 72-6-116.

(e) (i) The department shall construct curbs, gutters, and sidewalks on the state highways if necessary for the proper control of traffic, driveway entrances, or drainage.

(ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are removed, the department shall replace the curbs, gutters, or sidewalks.

(f) The department may furnish and install street lighting systems for state highways, but their operation and maintenance is the responsibility of the municipality.

(g) If new storm sewer facilities are necessary in the construction and maintenance of the state highways, the cost of the storm sewer facilities shall be borne by the state and the municipality in a proportion mutually agreed upon between the department and the municipality.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the location and construction of approach roads and driveways entering the state highway. The rules shall:

(i) include criteria for the design, location, and spacing of approach roads and driveways based on the functional classification of the adjacent highway, including the urban or rural nature of the area;

(ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model access management policy or ordinance developed by the department under Subsection 72-2-117[~~(9)~~](8);

(iii) include procedures for:

(A) the application and review of a permit for approach roads and driveways including review of related site plans that have been recommended according to local ordinances; and

(B) approving, modifying, denying, or appealing the modification or denial of a permit for approach roads and driveways within 45 days of receipt of the application; and

(iv) require written justifications for modifying or denying a permit.

(b) The department may delegate the administration of the rules to the highway authorities of a municipality.

(c) In accordance with this section and Section 72-7-104, an approach road or driveway may not be constructed on a state highway without a permit issued under this section.

(3) The department has jurisdiction and control over the entire right-of-way of interstate highways within municipalities and is responsible for the construction, maintenance, and regulation of the interstate highways within municipalities.

Section 56. Section 73-28-404 is amended to read:

73-28-404. Repayments returned to Water Resources Conservation and Development Fund -- Establishment of an enterprise fund.

(1) The board shall deposit, in accordance with Section 51-4-1, into the Water Resources Conservation and Development Fund:

(a) repayments of preconstruction and construction costs; and

(b) the interest charged.

(2) (a) There is created an enterprise fund, as defined in Subsection 51-5-4(8), entitled the "Lake Powell Pipeline Project Operation and Maintenance Fund."

(b) The fund consists of:

(i) revenues received from the sale of developed water that is designated for project operation, maintenance, repair, and replacement costs;

(ii) revenues received from the sale of electricity that are deposited in the fund in accordance with Subsection 73-28-203(3); and

(iii) all interest earned by the fund.

[~~(3) (a) Any unexpended monies remaining in the fund at the end of the fiscal year are nonlapsing.~~]

[~~(b)~~] (3) Notwithstanding Section 63J-1-211, the Legislature may not appropriate any monies from the Lake Powell Pipeline Project Operation and Maintenance Fund.

(4) The state treasurer shall:

(a) invest the monies in the enterprise fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the Lake Powell Pipeline Operation and Maintenance Fund.

(5) The committee shall approve the expenditure of fund monies to cover the project operation, maintenance, repair, and replacement costs, subject to:

(a) monies available in the fund; and

(b) rules established by the board under Subsection 73-28-104(2).

(6) If title to the project is transferred under Section 73-28-405, the agreement shall direct the disposition of the monies remaining in the fund.

Section 57. Section 77-32-601 is amended to read:

77-32-601. Establishment of Indigent Aggravated Murder Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Aggravated Murder Defense Trust Fund." [~~which shall be nonlapsing and~~]

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-602 and 77-32-603;

(b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving aggravated murder.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for aggravated murder in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Section 58. Section 77-32-701 is amended to read:

77-32-701. Establishment of Indigent Felony Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Felony Defense Trust Fund.

(2) (a) There is established a private-purpose trust fund known as the "Indigent Felony Defense Trust Fund." [~~which shall be nonlapsing and~~]

(b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to the provisions of this chapter.

(3) The fund consists of:

(a) money received from participating counties as provided in Sections 77-32-702 and 77-32-703;

(b) a one-time appropriation by the Legislature; and

(c) interest and earnings from the investment of fund money.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with the financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving felony offenses.

(6) Money allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for a felony in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Section 59. Section 79-3-401 is amended to read:

79-3-401. Disposition of survey income -- Sources of funds.

(1) Income to the survey is deposited with the state treasurer and credited by the treasurer to the General Fund [~~as a nonlapsing restrictive account~~] as dedicated credits for use by the survey.

(2) In addition to those funds that are available to the survey under Subsection (1), the Legislature shall provide such funds by appropriation as are reasonably necessary to meet the requirements of the survey in the performance of its duties and obligations.

Section 60. Repealer.

This bill repeals:

Section 9-8-604, Centennial History Fund.

Section 63M-1-2305, Annual report.

CHAPTER 304
H. B. 420
Passed March 9, 2011
Approved March 25, 2011
Effective July 1, 2012

WATER QUALITY BOARD POWERS AND DUTIES

Chief Sponsor: Julie Fisher
Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill amends the Water Quality Act by modifying the duties and responsibilities of the Water Quality Board and requiring legislative approval for certain recommendations.

Highlighted Provisions:

This bill:

- defines the term "total maximum daily load";
- authorizes the Water Quality Board to review all total daily maximum load reports and recommendations before submission to the EPA;
- authorizes the Water Quality Board to disapprove, approve, or approve with conditions all total daily maximum load recommendations;
- authorizes the Water Quality Board to provide suggestions to the Division of Water Quality in the event a total daily maximum load strategy is rejected;
- requires that any board-approved strategy or recommendation that will cost between $10,000,000 and $100,000,000 be reviewed by the Natural Resources, Agriculture, and Environment Interim Committee;
- requires that any board-approved strategy or recommendation that will cost over $100,000,000 be approved by the Legislature; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:

19-5-102, as last amended by Laws of Utah 2001, Chapter 274
19-5-104, as last amended by Laws of Utah 2008, Chapters 336 and 382

ENACTS:

19-5-104.5, Utah Code Annotated 1953

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

Section 1. Section 19-5-102 is amended to read:

19-5-102. Definitions.

As used in this chapter:

(1) "Board" means the Water Quality Board created in Section 19-1-106.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Discharge" means the addition of any pollutant to any waters of the state.

(4) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(6) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

(7) "Executive secretary" means the executive secretary of the board.

(8) "Point source":

(a) means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

(9) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(10) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

(11) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

(12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

(13) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(14) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

[~~(14)~~] (15) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

[~~(15)~~] (16) "Underground injection" means the subsurface emplacement of fluids by well injection.

[~~(16)~~] (17) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

[~~(17)~~] (18) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

[~~(18)~~] (19) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 2. Section 19-5-104 is amended to read:

19-5-104. Powers and duties of board.

(1) The board has the following powers and duties:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds necessary to discharge its duties;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, taking into account Subsection (3), to:

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan;

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

(iii) set effluent limitations and standards subject to Section 19-5-116;

(iv) implement or effectuate the powers and duties of the board; and

(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(g) issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; and

(iv) requiring compliance with this chapter and with rules made under this chapter;

(h) (i) review plans, specifications, or other data relative to disposal systems or any part of disposal systems;

(ii) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works; and

(iii) delegate the authority to issue an operating permit to a local health department;

(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:

(i) control the management of sewage sludge; or

(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;

(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;

(l) meet the requirements of federal law related to water pollution;

(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;

(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may:

(A) result in the public water system not complying with any national primary drinking water standards; or

(B) otherwise adversely affect the health of persons;

(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;

(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions;

(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems that:

(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

(ii) are constructed after May 4, 1998; [~~and~~]

(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; [~~and~~]

(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act[~~.~~]; and

(s) (i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected.

(2) In performing the duties listed in Subsection (1), the board shall give priority to pollution that results in a hazard to the public health.

(3) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection (1)(f)(i).

(4) In establishing certification rules under Subsection (1)(p), the board shall:

(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;

(c) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

(d) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

(e) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:

(i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;

(ii) has been employed at least 10 years in the operation of that treatment works or sewerage system prior to March 16, 1991; and

(iii) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.

Section 3. Section 19-5-104.5 is enacted to read:

19-5-104.5. Legislative approval.

(1) Before sending a board-approved report, strategy, or recommendation that will recommend a total maximum daily load end point and implementation strategy to the EPA for review and

approval, the Water Quality Board shall submit the report, strategy, or recommendation:

(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the report, strategy, or recommendation will require a public or private expenditure in excess of $10,000,000 but less than $100,000,000 for compliance; or

(b) for approval to the Legislature if the strategy will require a public or private expenditure of $100,000,000 or more.

(2) In reviewing a report, strategy, or recommendation, the Natural Resources, Agriculture, and Environment Interim Committee may:

(a) suggest additional areas of consideration; or

(b) recommend the report, strategy, or recommendation be re-evaluated by the Water Quality Board.

Section 4. Effective date.

This bill takes effect on July 1, 2012.

CHAPTER 305
H. B. 434
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011

COUNTY AMENDMENTS

Chief Sponsor: Melvin R. Brown
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill amends provisions related to a township planning commission.

Highlighted Provisions:

This bill:

- requires that on or before January 1, 2012, a county enact an ordinance providing for the election of at least three members of a township planning commission;
- provides for the appointment of a township planning commission member in certain circumstances;
- requires that on or before January 1, 2012, a county enact an ordinance designating the elected seats of a township planning commission; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-27a-301, as last amended by Laws of Utah 2008, Chapter 250

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

Section 1. Section 17-27a-301 is amended to read:

17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Township planning commission -- Compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) The ordinance shall define:

(a) the number and terms of the members and, if the county chooses, alternate members;

(b) the mode of appointment;

(c) the procedures for filling vacancies and removal from office;

(d) the authority of the planning commission; and

(e) other details relating to the organization and procedures of the planning commission.

(3) (a) If the county establishes a township planning commission, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection [~~(3)(e)~~] (4), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection [~~(3)(e)~~] (4), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection [~~(3)(e)~~] (4), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(k)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township planning commission from a list of three persons submitted by the county legislative body.

(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

[~~(e) (i)~~] (4) (a) The legislative body of each county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located shall on or before January 1, 2012, enact an ordinance that provides for the election of at least three members of the planning commission of that township.

[~~(ii) The~~] (b) (i) Beginning with the 2012 general election, the election of planning commission members under Subsection [~~(3)(e)(i)~~] (4)(a) shall coincide with the election of other county officers during even-numbered years.

(ii) Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

[~~(f) (i) (A) The legislative body of each county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located shall enact an ordinance appointing each elected~~]

(c) If no person files a declaration of candidacy in accordance with Section 20A-9-202 for an open township planning commission member position:

(i) the position may be appointed in accordance with Subsection (3)(b); and

(ii) a person appointed under Subsection (4)(c)(i) may not serve for a period of time that exceeds the elected term for which there was no candidate.

(5) (a) A legislative body described in Subsection (4)(a) shall on or before January 1, 2012, enact an ordinance that:

(i) designates the seats to be elected; and

(ii) subject to Subsection (6)(b), appoints a member of the planning and zoning board of the former township, established under Laws of Utah 1996, Chapter 308, as a member of the planning commission of the reconstituted or reinstated township. [~~Each~~]

(b) A member appointed under [~~this subsection shall be~~] Subsection (5)(a) is considered an elected member.

[~~(B) (I)~~] (6) (a) Except as provided in Subsection [~~(3)(f)(i)(B)(II)~~] (6)(b), the term of each member appointed under Subsection [~~(3)(f)(i)(A)~~] (5)(a) shall continue until the time that the member's term as an elected member of the former township planning and zoning board would have expired.

[~~(II)~~] (b) (i) Notwithstanding Subsection [~~(3)(f)(i)(B)(I)~~] (6)(a), the county legislative body may adjust the terms of the members appointed under Subsection [~~(3)(f)(i)(A)~~] (5)(a) so that the terms of those members coincide with the schedule under Subsection [~~(3)(e)(ii)~~] (4)(b) for elected members.

(ii) Subject to Subsection [~~(3)(f)(iii)~~] (6)(b)(iii), the legislative body of a county in which a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Laws of Utah 1996, Chapter 308, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Laws of Utah 1997, Chapter 389, or reinstated or established under Subsection 17-27a-306(1)(e)(i) has more than one appointed member who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection [~~(3)(f)(iii)~~] (6)(b)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) [~~no later than August 16, 1997,~~] to fill the position of each dismissed member.

[~~(g) (i)~~] (7) (a) Except as provided in Subsection [~~(3)(g)(ii)~~] (7)(b), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

[~~(ii)~~] (b) Notwithstanding Subsection [~~(3)(g)(i)~~] (7)(a), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection [~~(3)(f)~~] (5)(a), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that had previously been under the jurisdiction of the township planning and zoning board.

[~~(4)~~] (8) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

CHAPTER 306
H. B. 496
Passed March 10, 2011
Approved March 25, 2011
Effective May 10, 2011
(Exception clause in Section 17)

TECHNOLOGY AND LIFE SCIENCE ECONOMIC DEVELOPMENT ACT AND RELATED TAX CREDITS

Chief Sponsor: David Clark
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill enacts the Technology and Life Science Economic Development Act and provides for income tax credits related to certain technology and life science companies.

Highlighted Provisions:

This bill:

- enacts a nonrefundable income tax credit related to certain capital gain transactions related to a life science establishment;
- enacts a nonrefundable income tax credit related to the purchase of an ownership interest in certain life science establishments;
- enacts a refundable income tax credit for certain business entities that generate an increase in state tax revenues;
- enacts the Technology and Life Science Economic Development Act, including:
  - defining terms;
  - granting rulemaking authority;
  - authorizing the Governor's Office of Economic Development to enter into an agreement with certain persons;
  - establishing procedures to certify a tax credit and issue a tax credit certificate; and
  - requiring certain reports and studies; and
- makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates:

- to the Governor's Office of Economic Development - Administration as a one-time appropriation:
  - from the General Fund, $200,000, subject to intent language stating that the appropriation shall be used to administer the tax credits enacted in this bill.

Other Special Clauses:

This bill provides effective dates.
This bill provides for retrospective operation.

Utah Code Sections Affected:

ENACTS:

59-7-614.6, Utah Code Annotated 1953
59-10-1025, Utah Code Annotated 1953
59-10-1026, Utah Code Annotated 1953
59-10-1109, Utah Code Annotated 1953
63M-1-2901, Utah Code Annotated 1953
63M-1-2902, Utah Code Annotated 1953
63M-1-2903, Utah Code Annotated 1953
63M-1-2904, Utah Code Annotated 1953
63M-1-2905, Utah Code Annotated 1953
63M-1-2906, Utah Code Annotated 1953
63M-1-2907, Utah Code Annotated 1953
63M-1-2908, Utah Code Annotated 1953
63M-1-2909, Utah Code Annotated 1953
63M-1-2910, Utah Code Annotated 1953
63M-1-2911, Utah Code Annotated 1953

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

Section 1. Section 59-7-614.6 is enacted to read:

59-7-614.6. Refundable tax credit for certain business entities generating state tax revenue increases.

(1) As used in this section:

(a) "Eligible business entity" is as defined in Section 63M-1-2902.

(b) "Office" means the Governor's Office of Economic Development.

(c) "Pass-through entity" is as defined in Section 59-10-1402.

(d) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(2) Subject to the other provisions of this section, an eligible business entity may:

(a) claim a refundable tax credit as provided in Subsection (3); or

(b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit an eligible business entity may claim or pass through is the amount listed on the tax credit certificate that the office issues to the eligible business entity for a taxable year in accordance with Section 63M-1-2908.

(b) A tax credit under this section may not exceed the eligible new state tax revenues generated by an eligible business entity for the taxable year for which the eligible business entity claims a tax credit under this section.

(4) An eligible business entity may only claim or pass through a tax credit under this section:

(a) for a taxable year for which the eligible business entity holds a tax credit certificate issued in accordance with Section 63M-1-2908; and

(b) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (4)(a):

(i) for the taxable year in which the eligible business entity first generates eligible new state tax revenues; and

(ii) for two taxable years immediately following the year described in Subsection (4)(b)(i).

(5) An eligible business entity may not:

(a) carry forward or carry back a tax credit under this section; or

(b) claim or pass through a tax credit in an amount greater than the amount listed on a tax credit certificate issued in accordance with Section 63M-1-2908 for a taxable year.

Section 2. Section 59-10-1025 is enacted to read:

59-10-1025. Nonrefundable tax credit for investment in certain life science establishments.

(1) As used in this section:

(a) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(b) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.

(c) "Life science establishment" means an establishment described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(d) "Office" means the Governor's Office of Economic Development.

(e) "Pass-through entity" is as defined in Section 59-10-1402.

(f) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(g) "Qualifying ownership interest" means an ownership interest that is:

(i) (A) common stock;

(B) preferred stock; or

(C) an ownership interest in a pass-through entity;

(ii) originally issued to:

(A) an eligible claimant, estate, or trust; or

(B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit under this section was a pass-through entity taxpayer of the pass-through entity on the day on which the qualifying ownership interest was issued and remains a pass-through entity taxpayer of the pass-through entity until the last day of the taxable year for which the eligible claimant, estate, or trust claims a tax credit under this section; and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2011; and

(C) for money or other property, except for stock or securities.

(h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation" is as defined in Section 59-10-1022.

(ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a pass-through entity.

(2) Subject to the other provisions of this section, for a taxable year beginning on or after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase price of a qualifying ownership interest in a Utah small business corporation by the claimant, estate, or trust if:

(a) the qualifying ownership interest is issued by a Utah small business corporation that is a life science establishment;

(b) the qualifying ownership interest in the Utah small business corporation is purchased for at least $25,000;

(c) the eligible claimant, estate, or trust owned less than 30% of the qualifying ownership interest of the Utah small business corporation at the time of the purchase of the qualifying ownership interest; and

(d) on each day of the taxable year of the purchase of the qualifying ownership interest, the Utah small business corporation described in Subsection (2)(a) has at least 50% of its employees in the state.

(3) Subject to Subsection (4), the tax credit under Subsection (2):

(a) may only be claimed by the eligible claimant, estate, or trust:

(i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit certificate issued in accordance with Section 63M-1-2908; and

(ii) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (3)(a)(i), for a period of three taxable years as follows:

(A) the tax credit in the taxable year of the purchase of the qualifying ownership interest may not exceed 10% of the purchase price of the qualifying ownership interest;

(B) the tax credit in the taxable year after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 10% of the purchase price of the qualifying ownership interest; and

(C) the tax credit in the taxable year two years after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 15% of the purchase price of the qualifying ownership interest; and

(b) may not exceed the lesser of:

(i) the amount listed on the tax credit certificate issued in accordance with Section 63M-1-2908; or

(ii) $350,000 in a taxable year.

(4) An eligible claimant, estate, or trust may not claim a tax credit under this section for a taxable year if the eligible claimant, estate, or trust:

(a) has sold any of the qualifying ownership interest during the taxable year; or

(b) does not hold a tax credit certificate for that taxable year that is issued to the eligible claimant, estate, or trust by the office in accordance with Section 63M-1-2908.

(5) If a Utah small business corporation in which an eligible claimant, estate, or trust purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the eligible claimant, estate, or trust may not claim both the tax credit provided in this section and a capital loss on the qualifying ownership interest.

(6) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

Section 3. Section 59-10-1026 is enacted to read:

59-10-1026. Nonrefundable tax credit for capital gain transactions related to a life science establishment.

(1) As used in this section:

(a) (i) "Capital gain transaction" means a transaction that results in a short-term capital gain or long-term capital gain.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."

(b) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(c) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.

(d) "Life science establishment" means an establishment described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(e) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(f) "Office" means the Governor's Office of Economic Development.

(g) "Pass-through entity" is as defined in Section 59-10-1402.

(h) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(i) "Qualifying ownership interest" means an ownership interest that is:

(i) (A) common stock;

(B) preferred stock; or

(C) an ownership interest in a pass-through entity;

(ii) originally issued to:

(A) an eligible claimant, estate, or trust; or

(B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit under this section was a pass-through entity taxpayer of the pass-through entity on the day on which the qualifying ownership interest was issued and remains a pass-through entity taxpayer of the pass-through entity until the last day of the taxable year for which the eligible claimant, estate, or trust claims a tax credit under this section; and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2011; and

(C) for money or other property, except for stock or securities.

(j) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(k) (i) Except as provided in Subsection (1)(k)(ii), "Utah small business corporation" is as defined in Section 59-10-1022.

(ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a pass-through entity.

(2) Subject to the other provisions of this section, for a taxable year beginning on or after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that taxable year and meets the requirements of Subsection (3) may claim a nonrefundable tax credit equal to the lesser of:

(a) the amount shown on the tax credit certificate issued to the eligible claimant, estate, or trust by the office in accordance with Section 63M-1-2908; or

(b) the product of:

(i) the total amount of the eligible claimant's, estate's, or trust's short-term capital gain or long-term capital gain on a capital gain transaction that occurs on or after January 1, 2011; and

(ii) the tax rate imposed under Subsection 59-10-104(2)(b).

(3) An eligible claimant, estate, or trust may claim the nonrefundable tax credit allowed by Subsection (2) if:

(a) the gross proceeds of the capital gain transaction result from the sale of a qualifying ownership interest:

(i) held for at least two taxable years before the sale of the qualifying ownership interest; and

(ii) in a Utah small business corporation that is a life science establishment; and

(b) on each day of the taxable year of the capital gain transaction, the Utah small business corporation described in Subsection (3)(a)(ii) has at least 50% of its employees in the state.

(4) An eligible claimant, estate, or trust may not:

(a) carry forward or carry back a tax credit under this section; or

(b) claim a tax credit for a taxable year for which the eligible claimant, estate, or trust does not hold a tax credit certificate issued to the eligible claimant, estate, or trust for that taxable year by the office in accordance with Section 63M-1-2908.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(a) defining the term "gross proceeds"; and

(b) prescribing the circumstances under which an eligible claimant, estate, or trust has a qualifying ownership interest in a Utah small business corporation.

Section 4. Section 59-10-1109 is enacted to read:

59-10-1109. Refundable tax credit for certain business entities generating state tax revenue increases.

(1) As used in this section:

(a) "Eligible business entity" is as defined in Section 63M-1-2902.

(b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

(c) "Office" means the Governor's Office of Economic Development.

(d) "Pass-through entity" is as defined in Section 59-10-1402.

(e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(2) Subject to the other provisions of this section, an eligible business entity may:

(a) claim a refundable tax credit as provided in Subsection (3); or

(b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit is:

(i) for an eligible business entity, an amount up to the amount listed on the tax credit certificate that the office issues to the eligible business entity for the taxable year in accordance with Section 63M-1-2908; or

(ii) for a pass-through entity taxpayer, an amount up to the amount of a tax credit that an eligible business entity passes through to the pass-through entity taxpayer of the pass-through entity in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b).

(b) A tax credit under this section may not exceed the eligible new state tax revenues generated by an eligible business entity for the taxable year for which the eligible business entity claims a tax credit under this section.

(4) An eligible business entity or pass-through entity taxpayer to which an eligible business entity passes through a tax credit in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b) may only claim or pass through a tax credit under this section for:

(a) a taxable year for which the eligible business entity holds a tax credit certificate issued in accordance with Section 63M-1-2908; and

(b) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (4)(a):

(i) the taxable year in which the eligible business entity first generates eligible new state tax revenues; and

(ii) two taxable years following the year described in Subsection (4)(b)(i).

(5) An eligible business entity or a pass-through entity taxpayer may not:

(a) carry forward or carry back a tax credit under this section; or

(b) claim a tax credit under both this section and Section 59-7-614.6.

Section 5. Section 63M-1-2901 is enacted to read:

Part 29. Technology and Life Science Economic Development Act

63M-1-2901. Title.

This part is known as the "Technology and Life Science Economic Development Act."

Section 6. Section 63M-1-2902 is enacted to read:

63M-1-2902. Definitions.

As used in this part:

(1) "Board" means the Governor's Office of Economic Development Board of Directors.

(2) "Claimant" is as defined in Section 59-10-1002.

(3) "Eligible business entity" means a person that:

(a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-7-614.6 or 59-10-1109;

(b) is:

(i) a life science establishment; or

(ii) described in NAICS Code 334413, Semiconductor and Related Device Manufacturing, of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(c) has at least 50% of its employees in the state for each day of a taxable year the eligible business entity claims a tax credit under Section 59-7-614.6 or 59-10-1109; and

(d) receives a tax credit certificate from the office in accordance with this part.

(4) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:

(a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-10-1025 or 59-10-1026; and

(b) receives a tax credit certificate from the office in accordance with this part.

(5) "Eligible new state tax revenues" means an increased amount of tax revenues generated as a result of an eligible product or project by an eligible business entity or a new incremental job within the state under the following:

(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) Title 59, Chapter 10, Individual Income Tax Act; and

(c) Title 59, Chapter 12, Sales and Use Tax Act.

(6) "Eligible product or project" means any product or project produced by an eligible business entity that was not produced prior to the date of an agreement with the office under Section 63M-1-2908:

(a) by the eligible business entity; and

(b) within the state.

(7) "Life science establishment" is as defined in Section 59-10-1025.

(8) "New incremental job within the state" means, with respect to an eligible business entity, an employment position that:

(a) did not exist within the state before:

(i) the eligible business entity entered into an agreement with the office in accordance with this part; and

(ii) the eligible product was produced or the eligible project began;

(b) is not shifted from one location in the state to another location in the state; and

(c) is established to the satisfaction of the office, including by amounts paid or withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax Act.

(9) "Office" means the Governor's Office of Economic Development.

(10) "Tax credit" means a tax credit under:

(a) Section 59-7-614.6;

(b) Section 59-10-1025;

(c) Section 59-10-1026; or

(d) Section 59-10-1109.

(11) "Tax credit applicant" means a person that applies to the office to receive a tax credit certificate under this part.

(12) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the tax credit certificate recipient;

(b) lists the tax credit certificate recipient's taxpayer identification number;

(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and

(d) includes other information as determined by the office.

(13) "Tax credit certificate recipient" means:

(a) an eligible business entity that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-7-614.6 or 59-10-1109; or

(b) an eligible claimant, estate, or trust that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-10-1025 or 59-10-1026.

Section 7. Section 63M-1-2903 is enacted to read:

63M-1-2903. Tax credits issued by office.

(1) The office may issue tax credit certificates under this part only to the extent that the Legislature expressly sets aside money for the office to issue the tax credit certificates under this part.

(2) For fiscal year 2011-12 only, the office may issue a total of $1,300,000 in tax credit certificates in accordance with this part.

(3) If the total amount of tax credit certificates the office issues in a fiscal year is less than the amount of tax credit certificates the office may issue under this part in a fiscal year, the office may issue the remaining amount of tax credit certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax credit certificates.

Section 8. Section 63M-1-2904 is enacted to read:

63M-1-2904. Person may not claim or pass through a tax credit without tax credit certificate.

A person may not claim or pass through a tax credit unless the person has received a tax credit certificate from the office for the taxable year for which the person claims or passes through the tax credit.

Section 9. Section 63M-1-2905 is enacted to read:

63M-1-2905. Application process.

(1) A tax credit applicant may annually apply to the office to receive a tax credit certificate by filing an application with the office:

(a) on or before July 1; and

(b) on a form and in the manner prescribed by the office.

(2) The application shall include:

(a) tax return information as required by the office that is necessary for the office to determine eligibility for and the amount of a tax credit; and

(b) other documentation as required by the office.

(3) As part of the application required by this section, a tax credit applicant shall sign a separate document that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit certificate recipient's tax returns and other information concerning the tax credit certificate that:

(a) would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and

(b) are necessary for the office to determine eligibility for and the amount of a tax credit under this part.

(4) Upon receipt of the document described in Subsection (3), the State Tax Commission shall provide the office with the tax returns and other information requested by the office that the tax credit applicant directed or authorized the State Tax Commission to provide to the office, including information necessary to determine eligibility for the amount of a tax credit.

(5) If the office determines that the information a tax credit applicant provides is inadequate to provide a reasonable justification for authorizing a tax credit, the office shall:

(a) deny the tax credit; or

(b) inform the tax credit applicant that the information is inadequate and ask the tax credit applicant to submit new or additional documentation.

Section 10. Section 63M-1-2906 is enacted to read:

63M-1-2906. Criteria for tax credits.

(1) A tax credit applicant shall establish as part of the application required by Section 63M-1-2905 that the tax credit applicant:

(a) meets all of the criteria to receive the tax credit for which the tax credit applicant applies, except for the requirement to obtain a tax credit certificate; and

(b) will provide a long-term economic benefit to the state.

(2) The office may not issue a tax credit certificate to a tax credit applicant that fails to meet the requirements of Subsection (1)(a).

Section 11. Section 63M-1-2907 is enacted to read:

63M-1-2907. Rulemaking authority.

The office shall, by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish:

(1) criteria to prioritize the issuance of tax credits amongst tax credit applicants in a manner consistent with this part; and

(2) procedures for documenting the office's application of the criteria described in Subsection (1).

Section 12. Section 63M-1-2908 is enacted to read:

63M-1-2908. Agreement between tax credit applicant and office -- Tax credit certificate.

(1) Subject to the other provisions of this part, the office, with advice from the board, shall determine on or before the August 1 immediately following the July 1 described in Subsection 63M-1-2905(1):

(a) the tax credit applicant or applicants to which a tax credit certificate may be provided; and

(b) the amount of tax credit a tax credit applicant may receive.

(2) The office, with advice from the board, may enter into an agreement to grant a tax credit certificate to a tax credit applicant selected in accordance with this part, if the tax credit applicant meets the conditions established in the agreement and under this part.

(3) The agreement described in Subsection (2) shall:

(a) detail the requirements that the tax credit applicant shall meet prior to receiving a tax credit certificate;

(b) require the tax credit certificate recipient to retain records supporting a claim for a tax credit for at least four years after the tax credit certificate recipient claims a tax credit under this part; and

(c) require the tax credit certificate recipient to submit to audits for verification of the tax credit claimed, including audits by the office and by the State Tax Commission.

Section 13. Section 63M-1-2909 is enacted to read:

63M-1-2909. Issuance of tax credit certificates.

(1) For a tax credit applicant that seeks to claim a tax credit under Section 59-7-614.6, 59-10-1025, or 59-10-1109, the office may issue a tax credit certificate to the tax credit applicant:

(a) for the first taxable year for which the tax credit applicant qualifies for the tax credit and enters into an agreement with the office; and

(b) for two taxable years immediately following the taxable year described in Subsection (1)(a).

(2) For a tax credit applicant that seeks to claim a tax credit under Section 59-10-1026, the office may issue a tax credit certificate to the tax credit applicant only for the taxable year for which the tax credit applicant qualifies for the tax credit and enters into an agreement with the office.

(3) The office shall provide a duplicate copy of each tax credit certificate to the State Tax Commission.

Section 14. Section 63M-1-2910 is enacted to read:

63M-1-2910. Report to the Legislature -- Study by legislative committees.

(1) The office shall annually report to the Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee describing:

(a) the total amount listed on tax credit certificates the office issues under this part;

(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants under this part; and

(c) the economic impact on the state related to providing tax credits under this part.

(2) (a) On or before November 1, 2011, and every five years after November 1, 2011, the Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee shall:

(i) study the tax credits allowed under Sections 59-7-614.6, 59-10-1025, 59-10-1026, and 59-10-1109; and

(ii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) The study under Subsection (2)(a) shall include an evaluation of:

(i) the cost of the tax credits under Sections 59-7-614.6, 59-10-1025, 59-10-1026, and 59-10-1109;

(ii) the purposes and effectiveness of the tax credits; and

(iii) the extent to which the state benefits from the tax credits.

Section 15. Section 63M-1-2911 is enacted to read:

63M-1-2911. Reports of tax credits.

(1) Before December 1 of each year, the office shall submit a report to the Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:

(a) the total amount listed on tax credit certificates the office issues under this part; and

(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants.

(2) By the first business day of each month, the office shall submit a report to the Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:

(a) each new agreement entered into by the office since the last report;

(b) the total amount listed on tax credit certificates the office issues under this part; and

(c) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants.

Section 16. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

To Governor's Office of Economic Development - Administration

From General Fund - One-time	$200,000
Schedule of Programs:	
Governor's Office of Economic Development	$200,000

It is the intent of the Legislature that the appropriation be spent to administer the tax credits enacted in this bill.

Section 17. Effective date -- Retrospective operation.

(1) Except as provided in Subsection (2), this bill takes effect on May 10, 2011.

(2) The amendments to and enactments of the following sections have retrospective operation for a taxable year beginning on or after January 1, 2011:

(a) Section 59-7-614.6;

(b) Section 59-10-1025;

(c) Section 59-10-1026; and

(d) Section 59-10-1109.

CHAPTER 307
S. B. 12
Passed February 2, 2011
Approved March 25, 2011
Effective July 1, 2011

ALCOHOLIC BEVERAGE CONTROL ACT -MODIFICATIONS

Chief Sponsor: John L. Valentine
House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to correct omissions or errors made as part of the recodification of that act.

Highlighted Provisions:

This bill:

- reorders language;
- corrects or clarifies terminology, including defining the term "container";
- clarifies a formula related to the Alcoholic Beverage Enforcement and Treatment Restricted Account;
- clarifies references to specific licenses or sublicenses;
- relocates a provision addressing advertising;
- makes the provision related to a package agency posting a bond more consistent with other bond requirements in the act; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

32B-1-102 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-1-203 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-1-306 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-1-602 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-1-605 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-303 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-402 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276 and amended by Laws of Utah 2010, Chapter 276, Coordination Clause
32B-2-404 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-503 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-504 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-601 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-602 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-604 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-605 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-2-606 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-3-303 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-3-307 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-203 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-206 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-208 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-406 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-420 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-422 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-507 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-704 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-4-705 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-5-303 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-5-304 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-5-307 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-5-308 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-205 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-305 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-405 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-605 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-6-706 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-7-202 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-8-401 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-9-204 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-9-302 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-9-305 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-10-404 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
32B-11-608 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

RENUMBERS AND AMENDS:

32B-1-206, (Renumbered from 32B-4-510 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276)

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

Section 1. Section 32B-1-102 (Effective 07/01/11) is amended to read:

32B-1-102 (Effective 07/01/11). Definitions.

As used in this title:

(1) "Airport lounge" means a business location:

(a) at which an alcoholic product is sold at retail for consumption on the premises; and

(b) that is located at an international airport with a United States Customs office on the premises of the international airport.

(2) "Airport lounge license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

(3) "Alcoholic beverage" means the following:

(a) beer; or

(b) liquor.

(4) (a) "Alcoholic product" means a product that:

(i) contains at least .5% of alcohol by volume; and

(ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.

(b) "Alcoholic product" includes an alcoholic beverage.

(c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:

(i) except as provided in Subsection (4)(d), an extract;

(ii) vinegar;

(iii) cider;

(iv) essence;

(v) tincture;

(vi) food preparation; or

(vii) an over-the-counter medicine.

(d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.

(5) "Alcohol training and education seminar" means a seminar that is:

(a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

(b) described in Section 62A-15-401.

(6) "Banquet" means an event:

(a) that is held at one or more designated locations approved by the commission in or on the premises of a:

(i) hotel;

(ii) resort facility;

(iii) sports center; or

(iv) convention center;

(b) for which there is a contract:

(i) between a person operating a facility listed in Subsection (6)(a) and another person; and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

(7) (a) Subject to Subsection (7)(b), "bar" means a counter or similar structure:

(i) at which an alcoholic product is:

(A) stored; or

(B) dispensed; or

(ii) from which an alcoholic product is served.

(b) For purposes of a full-service restaurant license or a limited-service restaurant license, "bar structure" means a surface or structure on the premises of a restaurant if on or at any place of the surface or structure an alcoholic product is:

(i) stored; or

(ii) dispensed.

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (8)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(10) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

(11) "Billboard" means a public display used to advertise, including:

(a) a light device;

(b) a painting;

(c) a drawing;

(d) a poster;

(e) a sign;

(f) a signboard; or

(g) a scoreboard.

(12) "Brewer" means a person engaged in manufacturing:

(a) beer;

(b) heavy beer; or

(c) a flavored malt beverage.

(13) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.

(14) "Certificate of approval" means a certificate of approval obtained from the department under Subsection 32B-11-201(4).

(15) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:

(a) under a single contract;

(b) at a fixed charge in accordance with the bus company's tariff; and

(c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.

(16) "Church" means a building:

(a) set apart for worship;

(b) in which religious services are held;

(c) with which clergy is associated; and

(d) that is tax exempt under the laws of this state.

(17) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.

(b) "Club license" includes:

(i) a dining club license;

(ii) an equity club license;

(iii) a fraternal club license; or

(iv) a social club license.

(18) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.

(19) "Commissioner" means a member of the commission.

(20) "Community location" means:

(a) a public or private school;

(b) a church;

(c) a public library;

(d) a public playground; or

(e) a public park.

(21) "Community location governing authority" means:

(a) the governing body of the community location; or

(b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.

(22) "Container" means a receptacle that contains an alcoholic product, including:

(a) a bottle;

(b) a vessel; or

(c) a similar item.

[~~(22)~~] (23) "Convention center" means a facility that is:

(a) in total at least 30,000 square feet; and

(b) otherwise defined as a "convention center" by the commission by rule.

[~~(23)~~] (24) For purposes of a full-service restaurant license or limited-service restaurant license:

(a) subject to Subsection [~~(23)~~] (24)(b), "counter" means a surface or structure in a dining area of a restaurant where seating is provided to a patron for service of food; and

(b) "counter" does not include a surface or structure if on or at any point of the surface or structure an alcoholic product is:

(i) stored; or

(ii) dispensed.

[~~(24)~~] (25) "Department" means the Department of Alcoholic Beverage Control created in Section 32B-2-203.

[~~(25)~~] (26) "Department compliance officer" means an individual who is:

(a) an auditor or inspector; and

(b) employed by the department.

[~~(26)~~] (27) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

[~~(27)~~] (28) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a dining club license.

[~~(28)~~] (29) "Director," unless the context requires otherwise, means the director of the department.

[~~(29)~~] (30) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

(a) against a person subject to administrative action; and

(b) that is brought on the basis of a violation of this title.

[~~(30)~~] (31) For purposes of a full-service restaurant license or a limited-service restaurant license, "dispense" means:

(a) drawing of an alcoholic product:

(i) from an area where it is stored; or

(ii) as provided in Subsection 32B-6-205(12)(b)(ii) or 32B-6-305(12)(b)(ii); and

(b) using the alcoholic product described in Subsection [~~(29)~~] (30)(a) on the premises of the restaurant to mix or prepare an alcoholic product to be furnished to a patron of the restaurant.

[~~(31)~~] (32) "Distillery manufacturing license" means a license issued in accordance with Chapter 11, Part 4, Distillery Manufacturing License.

[~~(32)~~] (33) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

[~~(33)~~] (34) "Educational facility" includes:

(a) a nursery school;

(b) an infant day care center; and

(c) a trade and technical school.

[~~(34)~~] (35) "Equity club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an equity club license.

[~~(35)~~] (36) "Event permit" means:

(a) a single event permit; or

(b) a temporary beer event permit.

[~~(36)~~] (37) (a) "Flavored malt beverage" means a beverage:

(i) that contains at least .5% alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and

(iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

[~~(37)~~] (38) "Fraternal club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a fraternal club license.

[~~(38)~~] (39) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

[~~(39)~~] (40) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

(i) serve;

(ii) deliver; or

(iii) otherwise make available.

[~~(40)~~] (41) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

[~~(41)~~] (42) "Health care practitioner" means:

(a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(d) a physical therapist licensed under Title 58, Chapter 24b, Physical [~~Therapist~~] Therapy Practice Act;

(e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and

(m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

[~~(42)~~] (43) (a) "Heavy beer" means a product that:

(i) contains more than 4% alcohol by volume; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Heavy beer" is considered liquor for the purposes of this title.

[~~(43)~~] (44) "Hotel" is as defined by the commission by rule.

[~~(44)~~] (45) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

[~~(45)~~] (46) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

[~~(46)~~] (47) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

[~~(47)~~] (48) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

(a) law; or

(b) court order.

[~~(48)~~] (49) "Intoxicated" means that a person:

(a) is significantly impaired as to the person's mental or physical functions as a result of the use of:

(i) an alcoholic product;

(ii) a controlled substance;

(iii) a substance having the property of releasing toxic vapors; or

(iv) a combination of Subsections [~~(48)~~] (49)(a)(i) through (iii); and

(b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic product.

[~~(49)~~] (50) "Investigator" means an individual who is:

(a) a department compliance officer; or

(b) a nondepartment enforcement officer.

[~~(50)~~] (51) "Invitee" is as defined in Section 32B-8-102.

[~~(51)~~] (52) "License" means:

(a) a retail license;

(b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act; or

(d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

[~~(52)~~] (53) "Licensee" means a person who holds a license.

[~~(53)~~] (54) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

[~~(54)~~] (55) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

(a) in which the driver and a passenger are separated by a partition, glass, or other barrier;

(b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and

(c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

[~~(55)~~] (56) (a) (i) "Liquor" means a liquid that:

(A) is:

(I) alcohol;

(II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;

(III) a combination of liquids a part of which is spirituous, vinous, or fermented; or

(IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

(A) heavy beer;

(B) wine; and

(C) a flavored malt beverage.

(b) "Liquor" does not include beer.

[~~(56)~~] (57) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

[~~(57)~~] (58) "Liquor warehousing license" means a license that is issued:

(a) in accordance with Chapter 12, Liquor Warehousing License Act; and

(b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

[~~(58)~~] (59) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county; or

(b) for premises that are located in an incorporated city or a town, the governing body of the city or town.

[~~(59)~~] (60) "Lounge or bar area" is as defined by rule made by the commission.

[~~(60)~~] (61) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

[~~(61)~~] (62) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

[~~(62)~~] (63) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

(i) civil works;

(ii) a rivers and harbors project; or

(iii) a flood control project.

[~~(63)~~] (64) "Minor" means an individual under the age of 21 years.

[~~(64)~~] (65) "Nondepartment enforcement agency" means an agency that:

(a) (i) is a state agency other than the department; or

(ii) is an agency of a county, city, or town; and

(b) has a responsibility to enforce one or more provisions of this title.

[~~(65)~~] (66) "Nondepartment enforcement officer" means an individual who is:

(a) a peace officer, examiner, or investigator; and

(b) employed by a nondepartment enforcement agency.

[~~(66)~~] (67) (a) "Off-premise beer retailer" means a beer retailer who is:

(i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and

(ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

[~~(67)~~] (68) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

[~~(68)~~] (69) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises, regardless of whether the beer retailer sells beer for consumption off the licensed premises.

[~~(69) "Package" means any of the following containing an alcoholic product:~~]

[~~(a) a container;~~]

[~~(b) a bottle;~~]

[~~(c) a vessel; or~~]

[~~(d) other receptacle.~~]

(70) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

(71) "Package agent" means a person who holds a package agency.

(72) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

(a) a customer;

(b) a member;

(c) a guest;

(d) an attendee of a banquet or event;

(e) an individual who receives room service;

(f) a resident of a resort;

(g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102; or

(h) an invitee.

(73) "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

(74) "Person subject to administrative action" means:

(a) a licensee;

(b) a permittee;

(c) a manufacturer;

(d) a supplier;

(e) an importer;

(f) an out-of-state brewer holding a certificate of approval; or

(g) staff of:

(i) a person listed in Subsections (74)(a) through (g); or

(ii) a package agent.

(75) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

(76) "Prescription" means an order issued by a health care practitioner when:

(a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;

(b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(77) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(78) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(79) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

(80) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

(81) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or

(ii) stored in an electronic or other medium and is retrievable in a perceivable form.

(b) "Record" includes:

(i) a book;

(ii) a book of account;

(iii) a paper;

(iv) a contract;

(v) an agreement;

(vi) a document; or

(vii) a recording in any medium.

(82) "Residence" means a person's principal place of abode within Utah.

(83) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

(84) "Resort" is as defined in Section 32B-8-102.

(85) "Resort facility" is as defined by the commission by rule.

(86) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(87) "Restaurant" means a business location:

(a) at which a variety of foods are prepared;

(b) at which complete meals are served to the general public; and

(c) that is engaged primarily in serving meals to the general public.

(88) "Retail license" means one of the following licenses issued under this title:

(a) a full-service restaurant license;

(b) a limited-service restaurant license;

(c) a club license;

(d) an airport lounge license;

(e) an on-premise banquet license; or

(f) an on-premise beer license.

(89) "Room service" means furnishing an alcoholic product to a person in a guest room of a:

(a) hotel; or

(b) resort facility.

(90) "Serve" means to place an alcoholic product before an individual.

(91) (a) "School" means a building used primarily for the general education of minors.

(b) "School" does not include an educational facility.

(92) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(93) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:

(a) for the entertainment of one or more patrons;

(b) on the premises of:

(i) a social club licensee; or

(ii) a tavern;

(c) on behalf of or at the request of the licensee described in Subsection (93)(b);

(d) on a contractual or voluntary basis; and

(e) whether or not the person is designated as:

(i) an employee;

(ii) an independent contractor;

(iii) an agent of the licensee; or

(iv) a different type of classification.

(94) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

(95) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

(96) "Social club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a social club license.

(97) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

(98) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

(99) "Sports center" is as defined by the commission by rule.

(100) (a) "Staff" means an individual who engages in activity governed by this title:

(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;

(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or

(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

(i) an officer;

(ii) a director;

(iii) an employee;

(iv) personnel management;

(v) an agent of the licensee, including a managing agent;

(vi) an operator; or

(vii) a representative.

(101) "State of nudity" means:

(a) the appearance of:

(i) the nipple or areola of a female human breast;

(ii) a human genital;

(iii) a human pubic area; or

(iv) a human anus; or

(b) a state of dress that fails to opaquely cover:

(i) the nipple or areola of a female human breast;

(ii) a human genital;

(iii) a human pubic area; or

(iv) a human anus.

(102) "State of seminudity" means a state of dress in which opaque clothing covers no more than:

(a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and

(b) the human genitals, pubic area, and anus:

(i) with no less than the following at its widest point:

(A) four inches coverage width in the front of the human body; and

(B) five inches coverage width in the back of the human body; and

(ii) with coverage that does not taper to less than one inch wide at the narrowest point.

(103) (a) "State store" means a facility for the sale of packaged liquor:

(i) located on premises owned or leased by the state; and

(ii) operated by a state employee.

(b) "State store" does not include:

(i) a package agency;

(ii) a licensee; or

(iii) a permittee.

(104) For purposes of a full-service restaurant license or a limited-service restaurant license:

(a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

(b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron of the restaurant, except as provided in Subsection 32B-6-205(12)(b)(ii) or 32B-6-305(12)(b)(ii).

(105) "Sublicense" is as defined in Section 32B-8-102.

(106) "Supplier" means a person who sells an alcoholic product to the department.

(107) "Tavern" means an on-premise beer retailer who is:

(a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-premise Beer Retailer License.

(108) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

(109) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(110) "Unsaleable liquor merchandise" means a [~~package~~] container that:

(a) is unsaleable because the [~~package~~] container is:

(i) unlabeled;

(ii) leaky;

(iii) damaged;

(iv) difficult to open; or

(v) partly filled;

(b) (i) has faded labels or defective caps or corks;

(ii) has contents that are:

(A) cloudy;

(B) spoiled; or

(C) chemically determined to be impure; or

(iii) contains:

(A) sediment; or

(B) a foreign substance; or

(c) is otherwise considered by the department as unfit for sale.

(111) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.

(112) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section 2. Section 32B-1-203 (Effective 07/01/11) is amended to read:

32B-1-203 (Effective 07/01/11). Licensee compliance with other laws.

(1) A licensee and a person applying for a license shall comply with the applicable federal and state laws pertaining to payment of taxes and contributions to unemployment and insurance funds to which the licensee or person may be subject.

(2) The commission:

(a) may not issue a license to a person who violates this section; and

(b) may [~~not renew,~~] suspend, [~~or~~] revoke, or not renew the license of a licensee who violates this section.

Section 3. Section 32B-1-206, which is renumbered from Section 32B-4-510 (Effective 07/01/11) is renumbered and amended to read:

[~~32B-4-510 (Effective 07/01/11)~~]. 32B-1-206. Advertising prohibited -- Exceptions.

(1) (a) The department may not advertise liquor, except:

(i) the department may provide for an appropriate sign in the window or on the front of a state store or package agency denoting that it is a state authorized liquor retail facility;

(ii) the department or a package agency may provide a printed price [~~lists~~] list to the public;

(iii) the department may authorize the use of price posting and floor stacking of liquor within a state store;

(iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and

(v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.

(b) A listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.

(2) (a) The department may not advertise an alcoholic product on a billboard.

(b) A package agency may not advertise an alcoholic product on a billboard, except to the extent allowed by the commission by rule.

(3) (a) The department may not display liquor or a price [~~lists~~] list in a window or showcase visible to passersby.

(b) A package agency may not display liquor or a price [~~lists~~] list in a window or showcase visible to passersby, except to the extent allowed by the commission by rule.

(4) Except to the extent prohibited by this title, the advertising of an alcoholic product is allowed under guidelines established by the commission by rule.

(5) The advertising or use of any means or media to offer an alcoholic product to the general public without charge is prohibited.

Section 4. Section 32B-1-306 (Effective 07/01/11) is amended to read:

32B-1-306 (Effective 07/01/11). Use of information from a criminal background check.

The commission or department may use information obtained pursuant to Section 32B-1-305 only for one or more of the following purposes:

(1) enforcing this title;

(2) determining whether an individual is convicted of any of the following offenses that disqualify the individual under this title from acting in a capacity described in Subsection 32B-1-305(2):

(a) a felony under federal law or state law;

(b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;

(c) a crime involving moral turpitude; or

(d) on two or more occasions within the previous five years, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs;

(3) determining whether an individual fails to accurately disclose the [~~person's~~] individual's criminal history on an application or document filed with the department or commission;

(4) approving or denying an application for employment with the department;

(5) taking disciplinary action against a department employee, including possible termination of employment;

(6) issuing or denying an application to operate a package agency;

(7) issuing or denying an application for a license;

(8) issuing or denying the renewal of a package agency agreement;

(9) issuing or denying the renewal of a license;

(10) suspending the operation of a package agency;

(11) terminating a package agency contract; or

(12) suspending or revoking a license.

Section 5. Section 32B-1-602 (Effective 07/01/11) is amended to read:

32B-1-602 (Effective 07/01/11). Definitions.

As used in this part:

(1) "Malted beverage" means:

(a) beer;

(b) a flavored malt beverage; and

(c) heavy beer.

(2) "Packaging" means the outer packaging that is visible to a consumer such as a carton, case, or other wrapper of a [~~package~~] container.

Section 6. Section 32B-1-605 (Effective 07/01/11) is amended to read:

32B-1-605 (Effective 07/01/11). General procedure for approval.

(1) To obtain approval of the label and packaging of a malted beverage, the manufacturer of the malted beverage shall submit an application to the department for approval.

(2) The application described in Subsection (1) shall be on a form approved by the department and include the following:

(a) a copy of a federal certificate of label approval from the Department of Treasury, Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking approval;

(b) a complete set of original labels for each size of [~~package~~] container of the malted beverage;

(c) a description of the size of the [~~package~~] container on which a label will be placed;

(d) a description of each type of [~~package~~] container of the malted beverage; and

(e) a description of any packaging for the malted beverage.

(3) The department may assess a reasonable fee for reviewing a label and packaging for approval.

(4) (a) The department shall notify a manufacturer within 30 days after the day on which the manufacturer submits an application whether the label and packaging is approved or denied.

(b) If the department determines that an unusual circumstance requires additional time, the department may extend the time period described in Subsection (4)(a).

(5) A manufacturer shall obtain the approval of the department of a revision of a previously approved label and packaging before a malted beverage using the revised label and packaging may be distributed or sold in this state.

(6) (a) The department may revoke a label and packaging previously approved upon a finding that the label and packaging is not in compliance with this title or rules of the commission.

(b) The department shall notify the person who applies for the approval of a label and packaging at least five business days before the day on which a label and packaging approval is considered revoked.

(c) After receiving notice under Subsection (6)(b), a manufacturer may present written argument or evidence to the department on why the revocation should not occur.

(7) A manufacturer that applies for approval of a label and packaging may appeal a denial or revocation of a label and packaging approval to the commission.

Section 7. Section 32B-2-303 (Effective 07/01/11) is amended to read:

32B-2-303 (Effective 07/01/11). Purchase of liquor.

(1) The department may not purchase or stock spirituous liquor in a [~~package~~] container smaller than 200 milliliters, except as otherwise allowed by the commission.

(2) (a) An order by the department for the purchase of liquor, or a cancellation by the department of an order of liquor:

(i) shall be executed in writing by the department; and

(ii) is not valid or binding unless executed in writing.

(b) The department shall maintain a copy of an order or cancellation on file for at least three years.

(c) An electronic record satisfies Subsections (2)(a) and (b) pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act.

Section 8. Section 32B-2-402 (Effective 07/01/11) is amended to read:

32B-2-402 (Effective 07/01/11). Definitions -- Calculations.

(1) As used in this part:

(a) "Account" means the Alcoholic Beverage Enforcement and Treatment Restricted Account created in Section 32B-2-403.

(b) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(c) "Alcohol-related offense" means:

(i) a violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of:

(I) Subsection 41-6a-510(1); or

(II) Section 76-5-207; or

(ii) an offense involving the illegal:

(A) sale of an alcoholic product;

(B) consumption of an alcoholic product;

(C) distribution of an alcoholic product;

(D) transportation of an alcoholic product; or

(E) possession of an alcoholic product.

(d) "Annual conviction time period" means the time period that:

(i) begins on July 1 and ends on June 30; and

(ii) immediately precedes the fiscal year for which an appropriation under this part is made.

(e) "Municipality" means:

(i) a city; or

(ii) a town.

(2) For purposes of [~~this part~~] Subsection 32B-2-404(1)(b)(iii), the number of [~~state stores, package agencies, and retail licensees~~] premises located within the limits of a municipality or county:

(a) is the number determined by the department to be so located;

(b) includes the aggregate number of premises of the following:

(i) a state store;

(ii) a package agency; and

(iii) a retail licensee[~~, except for an on-premise beer retailer~~]; and

(c) for a county, consists only of the number located within an unincorporated area of the county.

(3) The department shall determine:

(a) a population figure according to the most current population estimate prepared by the Utah Population Estimates Committee;

(b) a county's population for the 25% distribution to municipalities and counties under Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated areas of the county; and

(c) a county's population for the 25% distribution to counties under Subsection 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of a municipality.

(4) (a) A conviction occurs in the municipality or county that actually prosecutes the offense to judgment.

(b) If a conviction is based upon a guilty plea, the conviction is considered to occur in the municipality or county that, except for the guilty plea, would have prosecuted the offense.

Section 9. Section 32B-2-404 (Effective 07/01/11) is amended to read:

32B-2-404 (Effective 07/01/11). Alcoholic Beverage Enforcement and Treatment Restricted Account distribution.

(1) (a) The money deposited into the account under Section 32B-2-403 shall be distributed to municipalities and counties:

(i) to the extent appropriated by the Legislature, except that the Legislature shall appropriate each fiscal year an amount equal to at least the amount deposited in the account in accordance with Section 59-15-109; and

(ii) as provided in this Subsection (1).

(b) The amount appropriated from the account shall be distributed as follows:

(i) 25% to municipalities and counties on the basis of the percentage of the state population residing in each municipality and county;

(ii) 30% to municipalities and counties on the basis of each municipality's and county's percentage of the statewide convictions for all alcohol-related offenses;

(iii) 20% to municipalities and counties on the basis of the percentage of the [~~state stores, package agencies, liquor licensees, and beer licensees~~] following in the state that are located in each municipality and county[~~; and~~]:

(A) state stores;

(B) package agencies;

(C) retail licensees; and

(D) off-premise beer retailers; and

(iv) 25% to the counties for confinement and treatment purposes authorized by this part on the basis of the percentage of the state population located in each county.

(c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law enforcement agency:

(A) the municipality may not receive money under this part; and

(B) the State Tax Commission:

(I) may not distribute the money the municipality would receive but for the municipality not having a law enforcement agency to that municipality; and

(II) shall distribute the money that the municipality would have received but for it not having a law enforcement agency to the county in which the municipality is located for use by the county in accordance with this part.

(ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i) demonstrates that the municipality can use the money that the municipality is otherwise eligible to receive in accordance with this part, the advisory council may direct the State Tax Commission to distribute the money to the municipality.

(2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax Commission shall annually:

(a) for an annual conviction time period:

(i) multiply by two the total number of convictions in the state obtained during the annual conviction time period for violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or Section 76-5-207; and

(ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions obtained during the annual conviction time period for the alcohol-related offenses other than the alcohol-related offenses described in Subsection (2)(a)(i);

(b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum obtained in Subsection (2)(a); and

(c) multiply the amount calculated under Subsection (2)(b), by the number of convictions

obtained in each municipality and county during the annual conviction time period for alcohol-related offenses.

(3) By not later than September 1 each year:

(a) the state court administrator shall certify to the State Tax Commission the number of convictions obtained for alcohol-related offenses in each municipality or county in the state during the annual conviction time period; and

(b) the advisory council shall notify the State Tax Commission of any municipality that does not have a law enforcement agency.

(4) By not later than December 1 of each year, the advisory council shall notify the State Tax Commission for the fiscal year of appropriation of:

(a) a municipality that may receive a distribution under Subsection (1)(c)(ii);

(b) a county that may receive a distribution allocated to a municipality described in Subsection (1)(c)(i);

(c) a municipality or county that may not receive a distribution because the advisory council has suspended the payment under Subsection 32B-2-405(2)(a); and

(d) a municipality or county that receives a distribution because the suspension of payment has been cancelled under Subsection 32B-2-405(2).

(5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax Commission shall annually distribute to each municipality and county the portion of the appropriation that the municipality or county is eligible to receive under this part, except for any municipality or county that the advisory council notifies the State Tax Commission in accordance with Subsection (4) may not receive a distribution in that fiscal year.

(b) (i) The State Tax Commission shall prepare forms for use by a municipality or county in applying for a distribution under this part.

(ii) A form described in this Subsection (5) may require the submission of information the State Tax Commission considers necessary to enable the State Tax Commission to comply with this part.

Section 10. Section 32B-2-503 (Effective 07/01/11) is amended to read:

32B-2-503 (Effective 07/01/11). Operational requirements for a state store.

(1) A state store shall display in a prominent place in the store a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(2) A state store may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(3) A state store may not sell, offer for sale, or furnish liquor to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(4) (a) A state store employee may not:

(i) consume an alcoholic product on the premises of a state store; or

(ii) allow any person to consume an alcoholic product on the premises of a state store.

(b) A violation of this Subsection (4) is a class B misdemeanor.

(5) (a) Sale or delivery of liquor may not be made on or from the premises of a state store, and a state store may not be kept open for the sale of liquor:

(i) on Sunday; or

(ii) on a state or federal legal holiday.

(b) Sale or delivery of liquor may be made on or from the premises of a state store, and a state store may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(6) (a) A minor may not be admitted into, or be on the premises of a state store unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) A state store employee that has reason to believe that a person who is on the premises of a state store is under the age of 21 and is not accompanied by a person described in Subsection (6)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanies the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A state store employee shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(d) A state store employee shall require a suspected minor and the person who accompanies the suspected minor into the state store to immediately leave the premises of the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(7) (a) A state store may not sell, offer for sale, or furnish liquor except in a sealed [~~package~~] container.

(b) A person may not open a sealed [~~package~~] container on the premises of a state store.

Section 11. Section 32B-2-504 (Effective 07/01/11) is amended to read:

32B-2-504 (Effective 07/01/11). Delivery of liquor to state store.

(1) Liquor to be sold from a state store may be transported from a warehouse authorized by the department to the state store if transported by a person authorized by the department to transport the liquor to the state store, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a [~~package~~] container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, liquor while it is in transit under this section.

Section 12. Section 32B-2-601 (Effective 07/01/11) is amended to read:

32B-2-601 (Effective 07/01/11). Commission's power to issue package agency.

(1) (a) The commission may, when the commission considers proper, issue authority to operate as a package agency by directing the department to enter into a package agency agreement with a person to sell, offer for sale, or furnish liquor in sealed [~~packages~~] containers from premises other than those owned or leased by the state.

(b) The commission shall authorize a person to operate a package agency by issuing a record that designates the person in charge of the package agency as a "package agent."

(2) (a) Subject to this Subsection (2), the commission may not issue a total number of package agencies that at any time exceeds the number determined by dividing the population of the state by 18,000.

(b) (i) The commission may issue a seasonal package agency in an area the commission considers proper.

(ii) A seasonal package agency shall be for a period of six consecutive months.

(iii) A seasonal package agency issued for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a Seasonal A package agency shall:

(A) begin on May 1; and

(B) end on October 31.

(iv) A seasonal package agency issued for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a Seasonal B package agency shall:

(A) begin on November 1; and

(B) end on April 30.

(v) In determining the number of package agencies that the commission may issue under this section:

(A) a seasonal package agency is counted as one-half of one package agency; and

(B) each Seasonal A package agency shall be paired with a Seasonal B package agency.

(c) (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the package agency are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the package agent.

(ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished.

(3) (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a package agency's sale of liquor.

(b) A package agent may not be a state employee. A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state.

(c) A package agent, when selling liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.

(4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title.

Section 13. Section 32B-2-602 (Effective 07/01/11) is amended to read:

32B-2-602 (Effective 07/01/11). Application requirements for a package agency.

(1) Before a person may store, sell, offer for sale, or furnish liquor in a sealed [~~package~~] container on its premises under a package agency, the person shall first obtain a package agency issued by the commission in accordance with this part.

(2) To obtain a package agency, a person seeking to be the package agent under this part shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee of $100;

(c) written consent of the local authority;

(d) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;

(e) a bond as specified by Section 32B-2-604;

(f) a floor plan of the premises, including a description and highlighting of that part of the

premises in which the person proposes that the package agency be located;

(g) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;

(h) a signed consent form stating that the package agent permits any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the package agency;

(i) if the person applying is an entity, verification that a person who signs the package agency application is authorized to sign on behalf of the entity; and

(j) any other information the commission or department may require.

(3) The commission may not issue a package agency to a person who is disqualified under Section 32B-1-304.

(4) The commission may not issue a package agency for premises that do not meet the proximity requirements of Section 32B-1-202.

Section 14. Section 32B-2-604 (Effective 07/01/11) is amended to read:

32B-2-604 (Effective 07/01/11). Bond related to package agency.

(1) (a) A package agent who has a consignment liquor inventory owned by the state shall post a consignment surety bond payable to the department in the amount of the consignment inventory.

(b) A consignment surety bond shall be conditioned upon a package agent's return of the unsold consignment liquor inventory at the termination of a package agency agreement.

(2) (a) A package agent that owns the package agency's liquor inventory shall post a cash bond or surety bond:

(i) in the penal amount fixed by the department, except that the penal amount shall be at least $1,000; and

(ii) payable to the department.

(3) A package agent shall procure and maintain the bond required under this section for as long as the package agent continues to operate as a package agent.

(4) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the package agent's faithful compliance with this title, the rules of the commission, and the package agency agreement.

(5) (a) If a surety bond posted by a package agency under this section is canceled due to the package agent's or package agency's negligence, the department may assess a $300 reinstatement fee.

(b) No part of a bond posted by a package agent under this section may be withdrawn:

(i) during the period the package agency is in effect; or

(ii) while a revocation of the package agency is pending against the package agent.

(6) (a) A bond posted under this section by a package agent may be forfeited if the package agency is revoked.

(b) Notwithstanding Subsection (6)(a), the department may make a claim against a bond posted by a package agent for money owed the department under this title without the commission first revoking the package agency.

Section 15. Section 32B-2-605 (Effective 07/01/11) is amended to read:

32B-2-605 (Effective 07/01/11). Operational requirements for package agency.

(1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.

(b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

(ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.

(iii) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or prohibition.

(2) (a) A package agency shall be operated by an individual who is either:

(i) the package agent; or

(ii) an individual designated by the package agent.

(b) An individual who is a designee under this Subsection (2) shall be:

(i) an employee of the package agent; and

(ii) responsible for the operation of the package agency.

(c) The conduct of the designee is attributable to the package agent.

(d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.

(e) A package agent shall state the name and title of a designee on the application for a package agency.

(f) A package agent shall:

(i) inform the department of a proposed change in the individual designated to operate a package agency; and

(ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).

(g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.

(3) A package agent shall display in a prominent place in the package agency:

(a) the record issued by the commission that designates the package agency; and

(b) a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.

(5) (a) A package agency may not purchase liquor from a person except from the department.

(b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.

(6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.

(7) A package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(8) A package agency may not sell, offer for sale, or furnish liquor to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(9) (a) A package agency may not employ a minor to handle liquor.

(b) (i) Staff of a package agency may not:

(A) consume an alcoholic product on the premises of a package agency; or

(B) allow any person to consume an alcoholic product on the premises of a package agency.

(ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

(10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) The notice required by Subsection (10)(a) shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the package agency will reopen or resume operation.

(e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.

(f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.

(11) A package agency may not transfer its operations from one location to another location without prior written approval of the commission.

(12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.

(b) A package agency has no monetary value for any type of disposition.

(13) (a) Subject to the other provisions of this Subsection (13):

(i) sale or delivery of liquor may not be made on or from the premises of a package agency, and a package agency may not be kept open for the sale of liquor:

(A) on Sunday; or

(B) on a state or federal legal holiday.

(ii) Sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(b) Subsection (13)(a) governs unless:

(i) the package agency is located at a winery licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(ii) the winery licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:

(A) a full-service restaurant license; or

(B) a limited-service restaurant license;

(iii) the restaurant is located at the winery;

(iv) the restaurant sells wines produced at the winery;

(v) the winery:

(A) owns the restaurant; or

(B) operates the restaurant;

(vi) the package agency only sells wine produced at the winery; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant.

(c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if the package agent that holds the package agency to sell liquor at the resort does not sell liquor in a manner similar to a state store.

(ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanies the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency may not sell, offer for sale, or furnish liquor except in a sealed [~~package~~] container.

(b) A person may not open a sealed [~~package~~] container on the premises of a package agency.

(16) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(17) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

(a) physical facilities;

(b) conditions of operation;

(c) hours of operation;

(d) inventory levels;

(e) payment schedules;

(f) methods of payment;

(g) premises security; and

(h) any other matter considered appropriate by the commission.

Section 16. Section 32B-2-606 (Effective 07/01/11) is amended to read:

32B-2-606 (Effective 07/01/11). Delivery of liquor to package agency.

(1) Liquor to be sold from a package agency may be transported from a warehouse or state store authorized by the department to the package agency if transported by a person authorized by the department to transport the liquor to the package agency, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a [~~package~~] container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, any liquor while the liquor is in transit under this section.

Section 17. Section 32B-3-303 (Effective 07/01/11) is amended to read:

32B-3-303 (Effective 07/01/11). Acts making a person subject to this part.

(1) One or more of the following acts constitute a nuisance activity:

(a) a single felony conviction within the last two years of:

(i) a retail licensee; or

(ii) supervisory or managerial level staff of the retail licensee;

(b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act:

(i) (A) of a retail licensee; or

(B) staff of the retail licensee;

(ii) within the last two years; and

(iii) made on the basis of an act that occurs on the licensed premises;

(c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37, Utah Controlled Substances Act, if:

(i) the convictions are made on the basis of an act that occurs on the licensed premises; and

(ii) there is evidence that the retail licensee knew or should have known of the illegal activity;

(d) a single conviction within the last two years of a retail licensee or staff of the retail licensee that is made on the basis of:

(i) pornographic and harmful materials:

(A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances; and

(B) if the violation occurs on the licensed premises;

(ii) prostitution;

(iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;

(iv) having any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;

(v) on the licensed premises engaging in or permitting a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value;

(vi) a disturbance of the peace that occurs on the licensed premises; or

(vii) disorderly conduct that occurs on the licensed premises; or

(e) three or more adjudicated violations of this title within the last two years by a retail licensee or by staff of the retail licensee that result in a criminal citation or an administrative referral to the department relating to:

(i) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product to a minor;

(ii) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product to a person actually, apparently, or obviously intoxicated;

(iii) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product after the lawful hours for the sale or furnishing; or

(iv) acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title.

(2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership, corporation, or limited liability company, a conviction under Subsection (1)(c) includes a conviction of any of the following for an offense described in Subsection (1)(c):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate retail licensee; or

(g) a member who owns at least 20% of a limited liability company retail licensee.

Section 18. Section 32B-3-307 (Effective 07/01/11) is amended to read:

32B-3-307 (Effective 07/01/11). Hearing on formal objections to renewal.

(1) Upon receipt of a formal objection that meets the requirements of Section 32B-3-306, the department shall:

(a) issue a notice of agency action; and

(b) serve on the retail licensee no later than 30 days before the expiration of the retail licensee's license:

(i) the notice of agency action; and

(ii) a copy of the formal objection.

(2) (a) A retail licensee against whom a notice of agency action is served under Subsection (1) may request a hearing.

(b) The request for hearing described in Subsection (2)(a) shall be:

(i) in writing; and

(ii) filed with the commission within 10 days of the day on which the notice of agency action is served on the retail licensee.

(c) If a retail licensee fails to file a request for hearing in accordance with this Subsection (2), the commission may not renew the license of the retail licensee.

(3) (a) Upon receipt of a request for hearing meeting the requirements of Subsection (2), the department shall immediately schedule a hearing that shall be:

(i) held no later than 10 days before the expiration date of the retail licensee's license; and

(ii) electronically recorded by the department.

(b) The retail licensee or an objecting governmental entity, at its own expense, may have

a reporter approved by the department prepare a transcript from the department's record of the hearing.

(c) (i) The department shall present information at the hearing that supports a finding that a nuisance activity occurred.

(ii) The information described in Subsection (3)(c)(i) shall be made a part of the record of the hearing.

(d) A retail licensee shall:

(i) have the opportunity to challenge or explain whether any of the nuisance activity that forms the basis for the formal objection occurred; and

(ii) be permitted to:

(A) testify;

(B) present evidence; and

(C) comment on the issues at the hearing.

(4) (a) A hearing held under this [~~chapter~~] part shall be conducted under the authority of the commission.

(b) The commission is responsible for rendering a final order on whether a retail licensee's license shall be renewed.

(c) Notwithstanding Subsections (4)(a) and (b), the commission may appoint a necessary hearing examiner to administer the hearing process.

(d) The commission or the hearing examiner appointed by the commission shall serve as the presiding officer at a hearing held under this section.

(e) The presiding officer at a hearing held under this section:

(i) shall evaluate:

(A) the information presented at the hearing in support of the formal objection; and

(B) any explanation and evidence offered by the retail licensee; and

(ii) may consider such factors as:

(A) the length of time the retail licensee has operated the licensed premises;

(B) the condition of the licensed premises;

(C) whether the retail licensee knew or should have known of the nuisance activity in question;

(D) whether the retail licensee failed to:

(I) make a substantial effort to correct the nuisance activity; and

(II) work with law enforcement to curtail the nuisance activity;

(E) whether the nuisance activity has been ongoing or temporary;

(F) whether the retail licensee or the retail licensee's staff:

(I) initiated contact with the law enforcement agency on the nuisance activity; and

(II) cooperated with the law enforcement agency's investigation; and

(G) whether prior efforts to stop the nuisance activity by the community or the retail licensee have been unsuccessful.

(5) An order issued under this section shall:

(a) be based on the evidence presented at the hearing; and

(b) state whether:

(i) the continued operation of the licensed premises will endanger the public health, peace, safety, welfare, or morals of the community; and

(ii) the retail license should or should not be renewed.

(6) (a) If the presiding officer is a hearing examiner appointed by the commission, the hearing officer shall issue a signed order in writing that:

(i) complies with Subsection (5);

(ii) recommends to the commission whether the retail license should or should not be renewed;

(iii) states the reasons for the hearing officer's decision; and

(iv) notifies the retail licensee and the objecting governmental entity that the hearing examiner's order will be considered by the commission at the next regularly scheduled meeting of the commission.

(b) The department shall promptly mail a copy of the hearing examiner's order to:

(i) the retail licensee; and

(ii) any objecting governmental entity.

(c) The commission at its next regularly scheduled meeting after receipt of a hearing examiner's order, shall decide whether to renew or not renew the retail license on the basis of:

(i) the record and evidence presented at the hearing; and

(ii) the hearing examiner's recommendation.

(7) (a) As an alternative to ordering that a retail license not be renewed under this section, the commission may conditionally renew a retail license by requiring that:

(i) the retail licensee and the licensed premises be closely monitored during the licensing year by:

(A) the department;

(B) local government officials; and

(C) law enforcement; and

(ii) the matter be reviewed before the next renewal period.

(b) The commission may conditionally renew a retail license contingent on a person listed in

Subsection (7)(b)(ii) divesting all interest in the retail licensed business if:

(i) the retail licensee is a partnership, corporation, or limited liability company; and

(ii) the formal objection filed under this section if filed solely on the basis of a felony conviction:

(A) of:

(I) a partner;

(II) a managing agent;

(III) a manager;

(IV) an officer;

(V) a director;

(VI) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate licensee; or

(VII) a member who owns at least 20% of a limited liability company licensee; and

(B) for illegal activity that occurred off of the licensed premises.

(8) (a) In accordance with this section, the commission shall issue a written order setting forth the commission's decision and the reason for the commission's decision.

(b) The order described in Subsection (8)(a) is considered final on the date the order becomes effective.

(c) The department shall serve a copy of the order on the retail licensee.

(9) A retail licensee whose retail license is not renewed by order of the commission may seek judicial review under the procedures provided in Section 32B-3-207.

(10) A retail licensee whose retail license is not renewed may not reapply for a license under this title for three years from the date the retail license is not renewed.

Section 19. Section 32B-4-203 (Effective 07/01/11) is amended to read:

32B-4-203 (Effective 07/01/11). Authority to inspect.

(1) (a) This Subsection (1) applies to:

(i) a commissioner;

(ii) an authorized representative of the commission or department; or

(iii) a law enforcement or peace officer.

(b) An individual described in Subsection (1)(a):

(i) shall be given access, ingress, and egress to and from premises or a conveyance used in the storage, sale, furnishing, manufacture, or transportation of an alcoholic product;

(ii) may open a [~~package~~] container containing, or supposed to contain, an article sold, or exposed for sale, held in possession, or manufactured with intent to sell in violation of this title or commission rules; and

(iii) may inspect the contents and take samples of the contents for analysis from a [~~package~~] container described in this Subsection (1).

(2) The following shall assist, when requested by a person described in Subsection (1), in tracing, finding, or discovering the presence of an article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights:

(a) a dealer;

(b) a clerk;

(c) a bookkeeper;

(d) an express agent;

(e) a railroad or airline official;

(f) a common or other carrier; and

(g) an employee of a person listed in this Subsection (2).

Section 20. Section 32B-4-206 (Effective 07/01/11) is amended to read:

32B-4-206 (Effective 07/01/11). Searches, seizures, forfeitures, and fines.

(1) The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

(a) an alcoholic product possessed, purchased, used, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title or commission rules;

(b) a [~~package~~] container or property used or intended for use as a [~~package~~] container for an alcoholic product in violation of this title or commission rules;

(c) raw materials, products, and equipment used, or intended for use, in manufacturing, processing, delivering, importing, exporting, or adulterating an alcoholic product in violation of this title or commission rules;

(d) implements, furniture, fixtures, or other personal property used or kept for a violation of this title or commission rules;

(e) conveyances including an aircraft, vehicle, or vessel used or intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Subsection (1)(a), (b), (c), or (d); and

(f) a record used or intended for use in violation of this title or commission rules.

(2) (a) Property subject to forfeiture under this title may be seized by a peace officer of this state or any other person authorized by law upon process issued by a court having jurisdiction over the property in accordance with the Utah Rules of

Criminal Procedure relating to search warrants or administrative warrants.

(b) Notwithstanding Subsection (2)(a), seizure without process may be made when:

(i) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(ii) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title;

(iii) the peace officer or other person authorized by law has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) the peace officer or other person authorized by law has probable cause to believe that the property is being or has been used, intended to be used, held, or kept in violation of this title or commission rules.

(3) If property is seized pursuant to a search or administrative warrant, a peace officer or other person authorized by law shall comply with the requirements of the Utah Rules of Criminal Procedure.

(4) (a) If property is seized without process:

(i) the peace officer or other person authorized by law shall make a return of the peace officer's or person's acts without delay directly to the district court of the county in which the property was located; and

(ii) the district court shall have jurisdiction of the case.

(b) A return shall describe:

(i) the property seized;

(ii) the place where the property is seized; and

(iii) any person in apparent possession of the property.

(c) A peace officer or other person described in Subsection (4)(a) shall promptly:

(i) deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure is made; or

(ii) post a written inventory of anything seized in a conspicuous place at the premises.

(d) A written inventory under this Subsection (4) shall state the place where the property is being held.

(5) Property taken or detained under this section is not repleviable but is considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction. When property is seized under this title, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by:

(i) the person or agency; or

(ii) the warrant under which the property is seized; or

(c) take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

(6) When property is subject to forfeiture under this section, a proceeding shall be instituted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(7) When property is ordered forfeited under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, by a finding of a court that no person is entitled to recover the property, the property, if an alcohol [~~package~~] container or product used as a [~~package~~] container for an alcoholic product, shall be disposed of as follows:

(a) An alcoholic product shall be sold in accordance with Section 24-1-17 if the alcoholic product is:

(i) unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid; and

(ii) otherwise in saleable condition.

(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, the department shall destroy the alcoholic product and its [~~package~~] container under competent supervision.

(8) Except when otherwise provided, a fine or forfeiture levied under this title shall be paid to the county treasurer of the county in which the prosecution occurred.

Section 21. Section 32B-4-208 (Effective 07/01/11) is amended to read:

32B-4-208 (Effective 07/01/11). Nuisances.

(1) As used in this section, "nuisance" means:

(a) a room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance where an alcoholic product is possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title; or

(b) an alcoholic product, [~~package~~] container, equipment, or other property kept or used in maintaining an item or property described in Subsection (1)(a).

(2) A person who maintains or assists in maintaining a nuisance is guilty of a class B misdemeanor.

(3) If a person has knowledge that, or has reason to believe that the person's room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used as a nuisance, or allows it to be occupied or used as a nuisance, the nuisance property is subject to a lien for and may be sold to pay the fines and costs assessed against the

person guilty of the common nuisance. This lien may be enforced by action in a court having jurisdiction.

(4) (a) The department shall bring an action to abate a nuisance in the name of the department in a court having jurisdiction.

(b) An action brought under this Subsection (4) is an action in equity.

(c) The department may not be required to post a bond to initiate an action under this Subsection (4).

(d) A court may issue:

(i) if it appears that a nuisance exists, a temporary writ of injunction restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial; and

(ii) an order restraining the defendant and any other person from removing or interfering with an alcoholic product, [~~package~~] container, equipment, or other property kept or used in violation of this title or commission rules.

(e) In an action to abate or enjoin a nuisance, the court need not find that the property involved is being unlawfully used at the time of the hearing.

(f) On finding that a material allegation of a petition or complaint is true, the court shall order that an alcoholic product may not be possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated, in any portion of the room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance.

(g) Upon judgment of a court ordering abatement of the nuisance, the court may order that the premises or conveyance in question may not be occupied or used for any purpose for one year, except under Subsection (4)(h).

(h) A court may permit premises or conveyance described in Subsection (4)(g) to be occupied or used:

(i) if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety, approved by the court, payable to the state;

(ii) on the condition that an alcoholic product will not be present in or on the premises or the conveyance; and

(iii) on the condition that payment of the fines, costs, and damages assessed for violation of this title or commission rules will be made.

(5) If a tenant of the premises uses the premises or any part of the premises in maintaining a nuisance, or knowingly permits use by another, the lease is void and the right to possession reverts to the owner or lessor who is entitled to the remedy provided by law for forcible detention of the premises.

(6) A person is guilty of assisting in maintaining a nuisance as provided in Section 76-10-804, if that person:

(a) knowingly permits a building or premises owned or leased by the person, or under the person's control, or any part of a building or premises, to be used in maintaining a nuisance; or

(b) after being notified in writing by a prosecutor or other citizen of the unlawful use, fails to take all proper measures to:

(i) abate the nuisance; or

(ii) remove the one or more persons from the premises.

Section 22. Section 32B-4-406 (Effective 07/01/11) is amended to read:

32B-4-406 (Effective 07/01/11). Unlawful sale, offer for sale, or furnishing of beer.

(1) Except as provided in Subsection (2):

(a) a person may not sell, offer for sale, or furnish beer to the general public in a [~~package~~] container that exceeds two liters; and

(b) a person may not purchase or possess beer in a [~~package~~] container that exceeds two liters.

(2) (a) A retail licensee may sell, offer for sale, or furnish beer on draft subject to the requirements of Section 32B-5-304.

(b) A retail licensee may purchase or possess beer in a [~~package~~] container that exceeds two liters to be dispensed on draft for consumption subject to the requirements of Section 32B-5-304.

(c) A beer wholesaler licensee may sell, offer for sale, or furnish beer in a [~~package~~] container that exceeds two liters to a retail licensee described in Subsection (2)(a).

Section 23. Section 32B-4-420 (Effective 07/01/11) is amended to read:

32B-4-420 (Effective 07/01/11). Unlawful adulteration.

(1) For purposes of this section, "tamper" means to do one or more of the following to the contents of a [~~package~~] container:

(a) fortify;

(b) adulterate;

(c) contaminate;

(d) dilute;

(e) change its character or purity; or

(f) otherwise change.

(2) A person may not, for any purpose, mix or allow to be mixed with an alcoholic product sold or supplied by the person as a beverage any of the following:

(a) a drug;

(b) methylic alcohol;

(c) a crude, unrectified, or impure form of ethylic alcohol; or

(d) another deleterious substance.

(3) (a) The following may not engage in an act listed in Subsection (3)(b):

(i) a package agent;

(ii) a retail licensee;

(iii) a permittee;

(iv) a beer wholesaler licensee;

(v) a liquor warehouser licensee;

(vi) a supplier; or

(vii) an importer.

(b) A person listed in Subsection (3)(a) may not:

(i) tamper with the contents of a [~~package~~] container of alcoholic product as originally marketed by a manufacturer;

(ii) refill or partly refill with any substance the contents of an original [~~package~~] container of alcoholic product as originally marketed by a manufacturer;

(iii) misrepresent the brand of an alcoholic product sold or offered for sale; or

(iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a purchaser without first advising the purchaser of the difference.

Section 24. Section 32B-4-422 (Effective 07/01/11) is amended to read:

32B-4-422 (Effective 07/01/11). Unlawful dispensing.

(1) For purposes of this section:

(a) "Primary spirituous liquor" means the main distilled spirit in a beverage.

(b) "Primary spirituous liquor" does not include a secondary alcoholic product used as a flavoring in conjunction with the primary distilled spirit in a beverage.

(2) A retail licensee licensed under this title to sell, offer for sale, or furnish spirituous liquor for consumption on the licensed premises, or staff of the retail licensee may not:

(a) sell, offer for sale, or furnish a primary spirituous liquor to a person on the licensed premises except in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department;

(b) sell, offer for sale, or furnish more than a total of 2.5 ounces of spirituous liquor per beverage;

(c) allow a person on the licensed premises to have more than a total of 2.5 ounces of spirituous liquor at a time; or

(d) (i) except as provided in Subsection (2)(d)(ii), allow a person to have more than two spirituous liquor beverages at a time; or

(ii) allow a person on the premises of the following to have more than one spirituous liquor beverage at a time:

(A) a full-service restaurant licensee;

(B) a person operating under a full-service restaurant sublicense;

(C) an on-premise banquet licensee;

(D) a person operating under an on-premise banquet [~~license~~] sublicense; or

(E) a single event permittee.

(3) A violation of this section is a class C misdemeanor.

Section 25. Section 32B-4-507 (Effective 07/01/11) is amended to read:

32B-4-507 (Effective 07/01/11). Interfering with manufacturer, supplier, or importer.

(1) Except as provided in Subsection (2), a commissioner, the director, or a department employee may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of staff by:

(a) a manufacturer of liquor;

(b) a supplier of liquor to the department; or

(c) an importer of liquor to the department.

(2) A person described in Subsection (1) may participate in the appointment, employment, or termination of appointment or employment to:

(a) determine qualifications for licensing in accordance with Chapter 11, Manufacturing and Related Licenses Act; or

(b) enforce compliance with this title.

Section 26. Section 32B-4-704 (Effective 07/01/11) is amended to read:

32B-4-704 (Effective 07/01/11). Tied house -- Prohibitions.

(1) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring or holding an interest in a license with respect to the premises of a retailer, except when the license is held by a retailer that is completely owned by the industry member.

(b) Interest in a retail license includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member.

(c) An interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.

(d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).

(2) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (2)(a):

(i) "interest" does not include complete ownership of a retail business by an industry member;

(ii) interest in retail property includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member;

(iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;

(iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;

(v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and

(vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.

(3) (a) Subject to Section 32B-4-705, it is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by furnishing, giving, renting, lending, or selling to the retailer equipment, a fixture, a sign, supplies, money, a service, or other thing of value.

(b) (i) For purposes of this Subsection (3), indirect inducement includes:

(A) furnishing a thing of value to a third party when the benefit resulting from the thing of value flows to an individual retailer; and

(B) making a payment for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

(A) the thing of value is furnished to a retailer by the third party without the knowledge or intent of the industry member; or

(B) the industry member does not reasonably foresee that the thing of value would be furnished to a retailer.

(c) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Section 32B-4-705 may be furnished directly by a third party to a retailer.

(d) (i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in Section 32B-4-705, is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(e) The furnishing of free warehousing by delaying delivery of an alcoholic product beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(f) A financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by paying or crediting the retailer for an advertising, display, or distribution service:

(a) as defined in and to the extent restricted by 27 C.F.R. Sec. 6.51 through 6.56; and

(b) subject to the exceptions:

(i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and

(ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(5) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by guaranteeing a loan or the repayment of a financial obligation of the retailer.

(6) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase beer from the industry member to the exclusion in whole or in part of a beer product sold or offered for sale by another person by extending to a retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge from all indebtedness arising from

the transaction by the retailer paying cash or its equivalent, unless:

(i) beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month; and

(ii) beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) A first party in-state check is considered cash payment if the check is:

(i) honored on presentment; and

(ii) received under the terms prescribed in Subsection (6)(a).

(c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (6)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

(7) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by requiring:

(i) the department to take and dispose of a certain quota of a product; or

(ii) a beer retailer to take and dispose of a certain quota of a beer product.

(b) (i) It is an unlawful means to induce to require:

(A) the department to purchase one product in order to purchase another product; or

(B) a beer retailer to purchase one beer product in order to purchase another beer product.

(ii) This Subsection (7)(b) includes:

(A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium [~~package~~] container such as:

(I) a distinctive decanter; or

(II) a wooden or tin box; or

(B) combination sales if one or more products may be purchased only in combination with another product and not individually.

(c) This Subsection (7) does not preclude the selling, at a special combination price, of two or more kinds or brands of products so long as the department or beer retailer:

(i) has the option of purchasing either product at the usual price; and

(ii) is not required to purchase a product the department or beer retailer does not want.

(d) An industry member may package and distribute an alcoholic product in combination with other nonalcoholic items.

(e) A combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

Section 27. Section 32B-4-705 (Effective 07/01/11) is amended to read:

32B-4-705 (Effective 07/01/11). Exclusions from tied house prohibitions.

(1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an industry member to a retailer under the conditions and within the limitations prescribed in:

(a) this section; and

(b) the applicable federal laws cited in this section.

(2) The following may be furnished by an industry member:

(a) a product display as provided in 27 C.F.R. Sec. 6.83;

(b) point of sale advertising material or a consumer advertising specialty as provided in 27 C.F.R. Sec. 6.84;

(c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;

(d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;

(e) combination packaging as provided in 27 C.F.R. Sec. 6.93;

(f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;

(g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;

(h) an advertising service as provided in 27 C.F.R. Sec. 6.98;

(i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;

(j) merchandise as provided in 27 C.F.R. Sec. 6.101; and

(k) an outside sign as provided in 27 C.F.R. Sec. 6.102.

(3) The following exceptions provided in federal law are not applicable:

(a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;

(b) the exception for a consumer tasting or sampling at a retail establishment as provided in 27 C.F.R. Sec. 6.95; and

(c) the exception for participation in a retailer association activity provided in 27 C.F.R. Sec. 6.100.

(4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain a record:

(a) of an item furnished to a retailer;

(b) on the premises of the industry member; and

(c) for a three-year period.

(5) A sample of liquor may be provided to the department under the following conditions:

(a) With the department's permission, an industry member may submit a department sample to the department for product testing, analysis, and sampling.

(b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.

(c) (i) A department sample may not exceed 1 liter.

(ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(d) A department sample submitted to the department:

(i) shall be shipped prepaid by the industry member by common carrier; and

(ii) may not be shipped by United States mail directly to the department's central administrative warehouse office.

(e) A department sample may not be shipped to any other location within the state.

(f) The industry member shall submit with a department sample submitted to the department a letter from the industry member that clearly:

(i) identifies the product as a "department sample"; and

(ii) states the FOB case price of the product.

(g) (i) The department may transfer a listed item from current stock:

(A) for use as a comparison control sample; or

(B) to verify product spoilage as considered appropriate.

(ii) The department shall charge back a sample transferred under this Subsection (5)(g) to the respective industry member.

(h) The department shall:

(i) account for, label, and record a department sample received or transferred;

(ii) account for the department sample's disposition; and

(iii) maintain a record of the sample and its disposition for a two-year period.

(i) The department shall affix to each [~~package~~] container of a department sample a label clearly identifying the product as a "department sample."

(j) The department shall dispose of a department sample delivered to the department or transferred from the department's current stock in one of the following ways as chosen by the department:

(i) test and analyze the department sample, with the remaining contents destroyed under controlled and audited conditions established by the department;

(ii) destroy the entire contents of the department sample under controlled and audited conditions established by the department; or

(iii) add the department sample to the inventory of the department for sale to the public.

(k) A person other than an authorized department official may not be in possession of a department sample except as otherwise provided.

(l) The department shall handle a liquor item received by the department from a supplier that is not designated as a sample by the supplier, but that is an item not specifically listed on a department purchase order, in accordance with this Subsection (5).

(m) The department may not use its money to pay freight or charges on a sample or a liquor item:

(i) shipped to the department by a supplier; and

(ii) not listed on a department purchase order.

(6) A sample of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (6).

(a) A sample of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.

(b) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation, an industry member may furnish the next largest size.

(7) An educational seminar may involve an industry member under the conditions listed in this Subsection (7).

(a) An industry member may provide or participate in an educational seminar:

(i) involving:

(A) the department;

(B) a retailer;

(C) a holder of a scientific or educational special use permit;

(D) another industry member; or

(E) an employee of a person listed in Subsections (7)(a)(i)(A) through (D); and

(ii) regarding a topic such as:

(A) merchandising and product knowledge;

(B) use of equipment; and

(C) a tour of an alcoholic product manufacturing facility.

(b) An industry member may not pay the expenses of or compensate a person who is a department employee, a retailer, or a permittee for attending a seminar or tour described in Subsection (7)(a).

(8) (a) A liquor industry member may conduct a tasting of a liquor product of the industry member:

(i) for the department, at the department's request; and

(ii) for a licensed industry representative, but only at the department's central administrative warehouse office.

(b) A liquor industry member may only use a department sample or industry representative sample when conducting a tasting of the industry member's liquor product.

(c) A beer industry member may conduct a tasting of a beer product for a beer retailer either at:

(i) the industry member's premises; or

(ii) a retail establishment.

(d) Except to the extent authorized by commission rule, an alcoholic product industry member may not conduct tasting or sampling activities with:

(i) a retailer; or

(ii) a member of the general public.

(9) A beer industry member may participate in a beer retailer association activity to the extent authorized by 27 C.F.R. Sec. 6.100.

(10) (a) An industry member may contribute to a charitable, civic, religious, fraternal, educational, or community activity, except the contribution may not be given to influence a retailer in the selection of a product that may be sold at the activity.

(b) An industry member or retailer violates this Subsection (10) if:

(i) the industry member's contribution influences, directly or indirectly, the retailer in the selection of a product; and

(ii) a competitor's product is excluded in whole or in part from sale at the activity.

(11) (a) An industry member may lease or furnish equipment listed in Subsection (11)(b) to a retailer if:

(i) the equipment is leased or furnished for a special event;

(ii) a reasonable rental or service fee is charged for the equipment; and

(iii) the period for which the equipment is leased or furnished does not exceed 30 days.

(b) This Subsection (11) applies to the following equipment:

(i) a picnic pump;

(ii) a cold plate;

(iii) a tub;

(iv) a keg box;

(v) a refrigerated trailer;

(vi) a refrigerated van; or

(vii) a refrigerated draft system.

(12) (a) A liquor industry member may assist the department in:

(i) ordering, shipping, and delivering merchandise;

(ii) new product notification;

(iii) listing and delisting information;

(iv) price quotations;

(v) product sales analysis;

(vi) shelf management; and

(vii) an educational seminar.

(b) (i) A liquor industry member may, to acquire a new listing:

(A) solicit an order from the department; and

(B) submit to the department a sample of the liquor industry member's products under Subsection (5) and price lists.

(ii) (A) An industry member is confined to the customer areas when the industry member visits a state store or package agency unless otherwise approved.

(B) An industry member is confined to the office area of a state warehouse when the industry member visits a state warehouse unless otherwise approved.

(13) A beer industry member may assist a beer retailer in:

(a) ordering, shipping, and delivering beer merchandise;

(b) new product notification;

(c) listing and delisting information;

(d) price quotations;

(e) product sales analysis;

(f) shelf management; and

(g) an educational seminar.

(14) A beer industry member may, to acquire a new listing:

(a) solicit an order from a beer retailer; and

(b) submit to a beer retailer a sample of the beer industry member's beer products under Subsection (5) and price lists.

Section 28. Section 32B-5-303 (Effective 07/01/11) is amended to read:

32B-5-303 (Effective 07/01/11). Purchase and storage of an alcoholic product by a retail licensee.

(1) (a) A retail licensee may not purchase liquor except from a state store or package agency.

(b) A retail licensee may transport liquor purchased from a state store or package agency from the place of purchase to the licensed premises.

(c) A retail licensee shall pay for liquor in accordance with rules established by the commission.

(2) (a) (i) A [~~beer retailer~~] retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the [~~beer retailer~~] retail licensee purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a [~~beer retailer~~] retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the [~~beer retailer~~] retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the [~~beer retailer~~] retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the [~~beer retailer~~] retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

(3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.

(4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Section 29. Section 32B-5-304 (Effective 07/01/11) is amended to read:

32B-5-304 (Effective 07/01/11). Portions in which alcoholic product may be sold.

(1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following requirements:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the retail licensee shall designate a location where flavorings are stored on the floor plan submitted to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert; and

(c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.

(2) (a) (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an individual portion that does not exceed 5 ounces per glass or individual portion.

(ii) A retail licensee may sell, offer for sale, or furnish an individual portion of wine to a patron in more than one glass if the total amount of wine does not exceed 5 ounces.

(b) (i) A retail licensee may sell, offer for sale, or furnish wine in a [~~package~~] container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) A retail licensee may sell, offer for sale, or furnish wine in a [~~package~~] container not to exceed 750 milliliters at a price fixed by the commission to a table of less than four persons.

(3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original [~~package~~] container at a price fixed by the commission, except that the original [~~package~~] container may not exceed one liter.

(4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an original [~~package~~] container at a price fixed by the commission, except that the original [~~package~~] container may not exceed one liter.

(5) (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original [~~package~~] container; and

(ii) in a [~~package~~] container on draft.

(b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):

(i) in a size of [~~package~~] container that exceeds two liters; or

(ii) to an individual patron in a size of [~~package~~] container that exceeds one liter.

Section 30. Section 32B-5-307 (Effective 07/01/11) is amended to read:

32B-5-307 (Effective 07/01/11). Bringing onto or removing alcoholic product from premises.

(1) Except as provided in Subsection (3):

(a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.

(b) A retail licensee may not allow a person to:

(i) bring onto licensed premises an alcoholic product for on-premise consumption; or

(ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee.

(2) Except as provided in Subsection (3):

(a) A person may not carry from a licensed premises of a retail licensee an open [~~package~~] container that:

(i) is used primarily for drinking purposes; and

(ii) contains an alcoholic product.

(b) A retail licensee may not permit a patron to carry from the licensed premises an open [~~package~~] container described in Subsection (2)(a).

(3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:

(i) permitted by the retail licensee; and

(ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

(b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.

(c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3).

(d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased in the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

Section 31. Section 32B-5-308 (Effective 07/01/11) is amended to read:

32B-5-308 (Effective 07/01/11). Requirements on staff or others on premises -- Employing a minor.

(1) Staff of a retail licensee, while on duty, may not:

(a) consume an alcoholic product; or

(b) be intoxicated.

(2) (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.

(b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Section 32. Section 32B-6-205 (Effective 07/01/11) is amended to read:

32B-6-205 (Effective 07/01/11). Specific operational requirements for a full-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a full-service restaurant licensee;

(ii) individual staff of a full-service restaurant licensee; or

(iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at the licensed premises on any day during the period that:

(i) begins at midnight; and

(ii) ends at 11:59 a.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:

(a) mix for an alcoholic product; or

(b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, opaque, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

(I) for dining;

(II) for staging; or

(III) as a lobby or waiting area;

(b) the full-service restaurant licensee uses an alcoholic product that is:

(i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the alcoholic product is dispensed it is in an unopened [~~package~~] container;

(B) the unopened [~~package~~] container is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the [~~package~~] container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

Section 33. Section 32B-6-305 (Effective 07/01/11) is amended to read:

32B-6-305 (Effective 07/01/11). Specific operational requirements for a limited-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a limited-service restaurant licensee;

(ii) individual staff of a limited-service restaurant licensee; or

(iii) both a limited-service restaurant licensee and staff of the limited-service restaurant licensee.

(2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(b) A product listed in Subsection (2)(a) may not be on the premises of a limited-service restaurant licensee except for use:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a limited-service restaurant licensee.

(6) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish wine or heavy beer at the licensed premises on any day during the period that:

(i) begins at midnight; and

(ii) ends at 11:59 a.m.

(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(7) A limited-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a limited-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a limited-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the limited-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a limited-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, opaque, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

(I) for dining;

(II) for staging; or

(III) as a lobby or waiting area;

(b) the limited-service restaurant licensee uses an alcoholic product that is:

(i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the alcoholic product is dispensed it is in an unopened [~~package~~] container;

(B) the unopened [~~package~~] container is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the [~~package~~] container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A limited-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of wine or heavy beer including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

Section 34. Section 32B-6-405 (Effective 07/01/11) is amended to read:

32B-6-405 (Effective 07/01/11). Specific licensing requirements for club license.

(1) To obtain a club license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) (i) a statement as to whether the person is seeking to qualify as:

(A) an equity club licensee;

(B) a fraternal club licensee;

(C) a dining club licensee; or

(D) a social club licensee; and

(ii) evidence that the person meets the requirements for the type of club license for which the person is applying;

(b) evidence that the person operates club premises where a variety of food is prepared and served in connection with dining accommodations; and

(c) if the person is applying for an equity club license or fraternal club license, a copy of the club's bylaws or house rules, and an amendment to those records.

(2) The commission may refuse to issue a club license to a person for an equity club license or fraternal club license if the commission determines that a provision of the person's bylaws or house rules, or amendments to those records is not:

(a) reasonable; and

(b) consistent with:

(i) the declared nature and purpose of the club licensee; and

(ii) the purposes of this part.

(3) (a) A club license expires on June 30 of each year.

(b) To renew a club license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than May 31.

(4) (a) The nonrefundable application fee for a club license is $250.

(b) The initial license fee for a club license is $2,500.

(c) The renewal fee for a club license is $1,600.

(5) The bond amount required for a [~~full-service restaurant~~] club license is the penal sum of $10,000.

Section 35. Section 32B-6-605 (Effective 07/01/11) is amended to read:

32B-6-605 (Effective 07/01/11). Specific operational requirements for on-premise banquet license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise banquet licensee and staff of the on-premise banquet licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise banquet licensee;

(ii) individual staff of an on-premise banquet licensee; or

(iii) both an on-premise banquet licensee and staff of the on-premise banquet licensee.

(2) An on-premise banquet licensee shall comply with Subsections 32B-5-301(4) and (5) for the entire premises of the hotel, resort facility, sports center, or convention center that is the basis for the on-premise banquet license.

(3) (a) For the purpose described in Subsection (3)(b), an on-premise banquet licensee shall

provide the department with advance notice of a scheduled banquet in accordance with rules made by the commission.

(b) Any of the following may conduct a random inspection of a banquet:

(i) an authorized representative of the commission or the department; or

(ii) a law enforcement officer.

(4) (a) An on-premise banquet licensee is not subject to Section 32B-5-302, but shall make and maintain the records the commission or department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) (a) Except as otherwise provided in this title, an on-premise banquet licensee may sell, offer for sale, or furnish an alcoholic product at a banquet only for consumption at the location of the banquet.

(b) A host of a banquet, a patron, or a person other than the on-premise banquet licensee or staff of the on-premise banquet licensee, may not remove an alcoholic product from the premises of the banquet.

(c) Notwithstanding Section 32B-5-307, a patron at a banquet may not bring an alcoholic product into or onto, or remove an alcoholic product from the premises of a banquet.

(6) (a) An on-premise banquet licensee may not leave an unsold alcoholic product at the banquet following the conclusion of the banquet.

(b) At the conclusion of a banquet, an on-premise banquet licensee shall:

(i) destroy an opened and unused alcoholic product that is not saleable, under conditions established by the department; and

(ii) return to the on-premise banquet licensee's approved locked storage area any:

(A) opened and unused alcoholic product that is saleable; and

(B) unopened [~~package~~] container of an alcoholic product.

(c) Except as provided in Subsection (6)(b) with regard to an open or sealed [~~package~~] container of an alcoholic product not sold or consumed at a banquet, an on-premise banquet licensee:

(i) shall store the alcoholic product in the on-premise banquet licensee's approved locked storage area; and

(ii) may use the alcoholic product at more than one banquet.

(7) Notwithstanding Section 32B-5-308, an on-premise banquet licensee may not employ a minor to sell, furnish, or dispense an alcoholic product in connection with the on-premise banquet licensee's banquet and room service activities.

(8) An on-premise banquet licensee may not sell, offer for sale, or furnish an alcoholic product at a banquet or in connection with room service any day during a period that:

(a) begins at 1 a.m.; and

(b) ends at 9:59 a.m.

(9) An on-premise banquet licensee shall maintain at least 50% of its total annual banquet gross receipts from the sale of food, not including:

(a) mix for an alcoholic product; and

(b) a charge in connection with the furnishing of an alcoholic product.

(10) (a) Subject to the other provisions of this Subsection (10), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (10)(a).

(11) (a) An on-premise banquet licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product shall complete an alcohol training and education seminar.

(12) A staff person of an on-premise banquet licensee shall remain at the banquet at all times when an alcoholic product is sold, offered for sale, furnished, or consumed at the banquet.

(13) (a) Room service of an alcoholic product to a guest room of a hotel or resort facility shall be provided in person by staff of an on-premise banquet licensee only to an adult guest in the guest room.

(b) An alcoholic product may not be left outside a guest room for retrieval by a guest.

(c) An on-premise banquet licensee may only provide an alcoholic product for room service in a sealed [~~package~~] container.

Section 36. Section 32B-6-706 (Effective 07/01/11) is amended to read:

32B-6-706 (Effective 07/01/11). Specific operational requirements for on-premise beer retailer license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise beer retailer;

(ii) individual staff of an on-premise beer retailer; or

(iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

(2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make and maintain the records the department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or sell liquor on its licensed premises.

(4) Beer sold in a sealed [~~package~~] container by an on-premise beer retailer may be removed from the on-premise beer retailer premises in the sealed [~~package~~] container.

(5) (a) Only an on-premise beer retailer that operates as a tavern is subject to Subsection 32B-5-309(1).

(b) An on-premise beer retailer is subject to Subsections 32B-5-309(2) and (3) regardless of whether it operates as a tavern.

(6) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its licensed premises during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) (i) Notwithstanding Subsection (5)(a), a tavern shall remain open for one hour after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern may finish consuming a single serving of beer not exceeding 26 ounces.

(ii) A tavern is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(c) A tavern may not allow a patron to remain on the licensed premises to consume beer on the licensed premises during a period that:

(i) begins at 2 a.m.; and

(ii) ends at 9:59 a.m.

(7) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a tavern.

(8) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of Subsection (8)(a) is a class A misdemeanor.

(b) (i) If an on-premise beer retailer purchases beer under this Subsection (8) from a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

(ii) Violation of Subsection (8)(b)(i) is a class B misdemeanor.

Section 37. Section 32B-7-202 (Effective 07/01/11) is amended to read:

32B-7-202 (Effective 07/01/11). General operational requirements for off-premise beer retailer.

(1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply with this section.

(b) Failure to comply with this section may result in a suspension or revocation of a local license.

(2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) A violation of Subsection (2)(a) is a class A misdemeanor.

(b) (i) If an off-premise beer retailer purchases beer under this Subsection (2) from a beer wholesaler licensee, the off-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

(ii) A violation of Subsection (2)(b) is a class B misdemeanor.

(3) An off-premise beer retailer may not possess, sell, offer for sale, or furnish beer in a [~~package~~] container larger than two liters.

(4) A minor may not sell beer on the licensed premises of an off-premise beer retailer unless:

(a) the sale is done under the supervision of a person 21 years of age or older who is on the licensed premises; and

(b) the minor is at least 16 years of age.

(5) (a) Subject to the other provisions of this Subsection (5), an off-premise beer retailer shall:

(i) display beer sold by the off-premise beer retailer in an area that is visibly separate and distinct from the area where nonalcoholic beverages are displayed; and

(ii) display a sign in the area described in Subsection (5)(a)(i) that:

(A) is prominent;

(B) is easily readable by a consumer;

(C) meets the requirements for format established by the commission by rule; and

(D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully."

(b) Notwithstanding Subsection (5)(a), a nonalcoholic beer may be displayed with beer if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.

(c) The requirements of this Subsection (5) apply to beer notwithstanding that it is labeled, packaged, or advertised as:

(i) a malt cooler; or

(ii) a beverage that may provide energy.

(d) The commission shall define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed."

(e) A violation of this Subsection (5) is an infraction.

(6) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or who sells beer to a patron for consumption off the premises of the off-premise beer retailer shall wear a unique identification badge:

(i) on the front of the staff's clothing;

(ii) visible above the waist;

(iii) bearing the staff's:

(A) first or last name;

(B) initials; or

(C) unique identification in letters or numbers; and

(iv) with the number or letters on the unique identification badge being sufficiently large to be clearly visible and identifiable while engaging in or directly supervising the retail sale of beer.

(b) An off-premise beer retailer shall make and maintain a record of each current staff's unique identification badge assigned by the off-premise beer retailer that includes the staff's:

(i) full name;

(ii) address; and

(iii) (A) driver license number; or

(B) similar identification number.

(c) An off-premise beer retailer shall make available a record required to be made or maintained under this Subsection (6) for immediate inspection by:

(i) a peace officer; or

(ii) a representative of the local authority that issues the off-premise beer retailer license.

(d) A local authority may impose a fine of up to $250 against an off-premise beer retailer that does not comply or require its staff to comply with this Subsection (6).

Section 38. Section 32B-8-401 (Effective 07/01/11) is amended to read:

32B-8-401 (Effective 07/01/11). Specific operational requirements for resort license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, and a person otherwise operating under a sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a resort licensee;

(ii) individual staff of a resort licensee;

(iii) a person otherwise operating under a sublicense;

(iv) individual staff of a person otherwise operating under a sublicense; or

(v) any combination of the persons listed in this Subsection (1)(b).

(2) (a) A resort licensee may not sell, offer for sale, or furnish an alcoholic product except:

(i) on a sublicense premises;

(ii) pursuant to a permit issued under this title; or

(iii) under a package agency agreement with the department, subject to Chapter 2, Part 6, Package Agency.

(b) A resort licensee who sells, offers for sale, or furnishes an alcoholic product as provided in Subsection (2)(a), shall sell, offer for sale, or furnish the alcoholic product:

(i) if on a sublicense premises, in accordance with the operational requirements under the provisions applicable to the sublicense, except as provided in Section 32B-8-402;

(ii) if under a permit issued under this title, in accordance with the operational requirements under the provisions applicable to the permit; and

(iii) if as a package agency, in accordance with the contract with the department and Chapter 2, Part 6, Package Agency.

(3) A resort licensee shall comply with Subsections 32B-5-301(4) and (5) within the boundary of the resort building.

(4) (a) Subject to Subsection (4)(b), a resort licensee shall operate in a manner so that at least 70% of the annual aggregate of the gross receipts related to the sale of food or beverages for the resort license and each of its sublicenses is from the sale of food, not including:

(i) mix for an alcoholic product; and

(ii) a charge in connection with the service of an alcoholic product.

(b) In calculating the annual aggregate of the gross receipts described in Subsection (4)(a), a resort licensee is not required to include in the calculation money from the sale of a bottle of wine by the resort licensee or under a sublicense in excess of $250.

(5) (a) A resort licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product under a resort license.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product under a resort license shall complete the alcohol training and education seminar.

(6) (a) Room service of an alcoholic product to a lodging accommodation of a resort licensee shall be provided in person by staff of a resort licensee only to an adult occupant in the lodging accommodation.

(b) An alcoholic product may not be left outside a lodging accommodation for retrieval by an occupant.

(c) A resort licensee may only provide an alcoholic product for room service in a sealed [~~package~~] container.

Section 39. Section 32B-9-204 (Effective 07/01/11) is amended to read:

32B-9-204 (Effective 07/01/11). General operational requirements for an event permit.

(1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at an event for which an event permit is issued, shall comply with this title and rules of the commission.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) an event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event; or

(III) any combination of the persons listed in this Subsection (1)(b);

(B) immediate revocation of the event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the event permit is revoked, disqualifies the event permittee from applying for an event permit for a period of three years from the date of revocation of the event permit.

(c) An alcoholic product seized under this Subsection (1) shall be returned to the event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) (a) If there is a conflict between this part and the relevant part under this chapter for the specific type of special use permit held by the special use permittee, the relevant part governs.

(b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the relevant part under this chapter for the type of event permit that is held by the event permittee.

(c) Notwithstanding that this part or the relevant part under this chapter for the type of event permit held by an event permittee refers to "event permittee," a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the event permit is issued is subject to the same requirement or prohibition.

(3) An event permittee shall display a copy of the event permit in a prominent place in the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

(4) An event permittee may not on the premises of the event:

(a) engage in or allow any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(5) An event permittee may not knowingly allow a person at an event to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

(a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or

(b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

(6) An event permittee may not sell, offer for sale, or furnish beer except beer purchases from:

(a) a beer wholesaler licensee;

(b) a beer retailer; or

(c) a small brewer.

(7) An event permittee may not store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product purchased for an event in a location other than that described in the application

and designated on the event permit unless the event permittee first applies for and receives approval from the commission for a change of location.

(8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original [~~package~~] container; and

(ii) in a [~~package~~] container on draft.

(b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to Subsection (8)(a):

(i) in a size of [~~package~~] container that exceeds two liters; or

(ii) to an individual patron in a size of [~~package~~] container that exceeds one liter.

(9) (a) An event permittee may not sell or offer for sale an alcoholic product at less than the cost of the alcoholic product to the event permittee.

(b) An event permittee may not sell or offer for sale an alcoholic product at a price that encourages over consumption or intoxication.

(c) An event permittee may not sell or offer for sale an alcoholic product at a special or reduced price for only certain hours of the day of an event.

(d) An event permittee may not sell, offer for sale, or furnish more than one alcoholic product at the price of a single alcoholic product.

(e) An event permittee may not engage in a public promotion involving or offering a free alcoholic product to the general public.

(10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(11) (a) An alcoholic product is considered under the control of the event permittee during an event.

(b) A patron at an event may not bring an alcoholic product onto the premises of the event.

(12) An event permittee may not permit a patron to carry from the premises an open [~~package~~] container that:

(a) is used primarily for drinking purposes; and

(b) contains an alcoholic product.

(13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at an event is considered under the supervision and direction of the event permittee.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at an event may not, while on duty:

(i) consume an alcoholic product; or

(ii) be intoxicated.

(14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an event.

(15) The location specified in an event permit may not be changed without prior written approval of the commission.

(16) An event permittee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the event permit to another person whether for monetary gain or not.

(17) (a) An event permittee may not sell, offer for sale, furnish, or allow the consumption of an alcoholic product during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) This Subsection (17) does not preclude a local authority from being more restrictive with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic product at an event.

(18) A patron may have no more than one alcoholic product of any kind at a time before the patron.

Section 40. Section 32B-9-302 (Effective 07/01/11) is amended to read:

32B-9-302 (Effective 07/01/11). Definitions.

As used in this [~~chapter~~] part:

(1) "120 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 120 consecutive hours.

(2) "72 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 72 consecutive hours.

(3) "Single event permit" means:

(a) a 120 hour single event permit; and

(b) a 72 hour single event permit.

Section 41. Section 32B-9-305 (Effective 07/01/11) is amended to read:

32B-9-305 (Effective 07/01/11). Specific operational requirements for single event permit.

(1) (a) In addition to complying with Section 32B-9-204, a single event permittee or a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) a single event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event; or

(III) any combination of persons listed in this Subsection (1)(b);

(B) immediate revocation of the single event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the single event permit is revoked, disqualifies the single event permittee from applying for a single event permit or temporary beer event permit for a period of three years from the date of revocation of the single event permit.

(c) An alcoholic product seized under this Subsection (1) shall be returned to the single event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) (a) A single event permittee shall make and maintain an expense and revenue ledger or record showing:

(i) expenditures made for:

(A) liquor;

(B) beer;

(C) set-ups; and

(D) an ingredient or component of an alcoholic product other than a set-up; and

(ii) the revenue from the sale of an alcoholic product.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) A single event permittee shall purchase liquor stored, sold, offered for sale, furnished, or consumed at an event from a state store or package agency.

(4) (a) A single event permittee may not sell, offer for sale, or furnish a primary spirituous liquor in a quantity that exceeds 1.5 ounces per beverage, except that additional spirituous liquor may be used in a beverage if:

(i) used as a secondary flavoring ingredient;

(ii) used in conjunction with the primary spirituous liquor;

(iii) the secondary ingredient is not the only spirituous liquor in the beverage;

(iv) a patron has no more than 2.5 ounces of spirituous liquor at a time before the patron; and

(v) a patron has no more than one spirituous liquor drink at a time before the patron.

(b) Spirituous liquor need not be dispensed through a calibrated metered dispensing system.

(5) (a) A single event permittee may sell, offer for sale, or furnish wine by the glass or an individual portion, except that a glass or individual portion may not exceed five ounces.

(b) A single event permittee may furnish an individual portion served to a patron in more than one glass if the total amount of wine does not exceed five ounces.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection 32B-9-204(12).

(d) A single event permittee may sell, offer for sale, or furnish wine in a [~~package~~] container not exceeding 1.5 liters at a price fixed by the commission.

(6) A single event permittee may sell, offer for sale, or furnish heavy beer in an original [~~package~~] container at a price fixed by the commission, except that the original [~~package~~] container may not exceed one liter.

(7) A single event permittee may sell, offer for sale, or furnish a flavored malt beverage in an original [~~package~~] container at a price fixed by the commission, except that the original [~~package~~] container may not exceed one liter.

(8) (a) A single event permittee may sell liquor only at a price fixed by the commission.

(b) A single event permittee may not sell liquor at a discount price on any date or at any time.

(9) A single event permittee may perform a service and assess a service charge as authorized by commission rule for liquor purchased at an event.

Section 42. Section 32B-10-404 (Effective 07/01/11) is amended to read:

32B-10-404 (Effective 07/01/11). Specific operational requirements for industrial or manufacturing use permit.

(1) (a) In addition to complying with Section 32B-10-206, an industrial or manufacturing use permittee and staff of the industrial or manufacturing use permittee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an industrial or manufacturing use permittee;

(ii) individual staff of an industrial or manufacturing use permittee; or

(iii) an industrial or manufacturing use permittee and staff of the industrial or manufacturing use permittee.

(2) An industrial or manufacturing use permittee may produce for lawful use and sale the following:

(a) vinegar;

(b) preserved nonintoxicating cider;

(c) a food preparation;

(d) a United States Pharmacopoeia or national formulary preparation in conformity with Title 58, Chapters 17b, 37, 37a, 37b, and 37c, if the preparation:

(i) conforms to standards established by:

(A) the Department of Agriculture and Food; and

(B) the Department of Health; and

(ii) contains no more alcohol than is necessary to preserve or extract the medicinal, flavoring, or perfumed properties of the treated substances; and

(e) wood and denatured alcohol if manufactured in compliance with the formulas and regulations under Title 27, C.F.R. Parts 19, 20, and 21.

(3) (a) An industrial or manufacturing use permittee that produces patent or proprietary medicines containing alcohol may sell or offer for sale the medicines in the original and unbroken [~~package~~] container if the medicine contains sufficient medication to prevent its use as an alcoholic product.

(b) An industrial or manufacturing use permittee described in this Subsection (3) shall, upon request by the department, provide a sufficient sample of the medicine to enable the department to have the medicine analyzed for purposes of this section.

Section 43. Section 32B-11-608 (Effective 07/01/11) is amended to read:

32B-11-608 (Effective 07/01/11). Operational requirements for local industry representative license.

(1) (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state, shall comply with this title and rules of the commission.

(b) If a person knowingly violates Subsection (1)(a):

(i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(A) a local industry representative licensee;

(B) individual staff of a local industry representative licensee; or

(C) both a local industry representative licensee and staff of the local industry representative licensee; and

(ii) if the conditions of Subsection (1)(c) are met, the commission may order:

(A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and

(B) a suspension of the department's purchase of those products for a period determined by the commission.

(c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

(i) directly commits the violation; or

(ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.

(2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.

(b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

(i) acquires the account of a manufacturer, supplier, or importer; or

(ii) loses the account of a manufacturer, supplier, or importer.

(4) (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) Staff of a local industry representative licensee may not be:

(a) a retail licensee that sells, offers for sale, or furnishes liquor;

(b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or

(c) a minor.

(6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for any type of disposition.

(7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:

(a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:

(i) assist the department in:

(A) ordering, shipping, and delivering merchandise;

(B) providing new product notification;

(C) obtaining listing and delisting information;

(D) receiving price quotations;

(E) providing product sales analysis;

(F) conducting shelf management; and

(G) conducting educational seminars; and

(ii) to acquire new listings:

(A) solicit orders from the department; and

(B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;

(b) may not sell liquor within the state except to:

(i) the department; and

(ii) a military installation;

(c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;

(d) may not sell or furnish any liquor to any person within this state other than to:

(i) the department; or

(ii) a military installation;

(e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;

(f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and

(g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.

(8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).

(a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) An industry representative sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(c) An industry representative sample may only be of a product not presently listed on the department's sales list.

(d) (i) An industry representative sample shall be shipped:

(A) prepaid by the manufacturer, supplier, or importer;

(B) by common carrier and not via United States mail; and

(C) directly to the department's central administrative warehouse office.

(ii) An industry representative sample may not be shipped to any other location within the state.

(e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"; and

(ii) clearly stating:

(A) the FOB case price of the product; and

(B) the name of the local industry representative for whom it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to a [~~package~~] container a label clearly identifying the product as an "industry representative sample."

(h) The department shall:

(i) account for and record each industry representative sample received;

(ii) account for the industry representative sample's disposition; and

(iii) maintain a record of the industry representative sample and its disposition for a two-year period.

(i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.

(j) A local industry representative licensee's and a local industry representative licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.

(k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.

(l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) the contents destroyed under controlled and audited conditions established by the department; or

(ii) added to the inventory of the department for sale to the public.

Section 44. Effective date.

This bill takes effect on July 1, 2011.

CHAPTER 308
S. B. 13
Passed February 2, 2011
Approved March 25, 2011
Effective May 10, 2011
(Exception clause in Section 7)

PER DIEM AND TRAVEL MODIFICATIONS

Chief Sponsor: Peter C. Knudson
House Sponsor: Kraig Powell

LONG TITLE

General Description:

This bill modifies per diem and travel expense provisions used for authorities, boards, commissions, councils, and committees.

Highlighted Provisions:

This bill:

- defines terms;
- replaces language used to describe per diem and travel expenses for members of certain authorities, commissions, and councils with standardized language referencing primary provisions for per diem and travel expenses;
- modifies provisions regarding per diem and travel expenses; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

9-3-502, as enacted by Laws of Utah 2010, Chapter 364
9-3-602, as enacted by Laws of Utah 2010, Chapter 152
32B-2-201 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276
63A-3-106, as last amended by Laws of Utah 2009, Chapter 25
63A-3-107, as last amended by Laws of Utah 2009, Chapter 25
73-30-201, as enacted by Laws of Utah 2010, Chapter 141

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

Section 1. Section 9-3-502 is amended to read:

9-3-502. Creation -- Members -- Chair -- Powers -- Quorum -- Per diem and travel expenses.

(1) There is created an independent state agency and a body politic and corporate known as the "Heber Valley Historic Railroad Authority."

(2) The authority shall be composed of eight members as follows:

(a) one member of the county legislative body of Wasatch County;

(b) the mayor of Heber City;

(c) the mayor of Midway;

(d) the executive director of the Department of Transportation or the executive director's designee;

(e) the executive director of Parks and Recreation, or the executive director's designee;

(f) three public members appointed by the governor with the consent of the Senate, being private citizens of the state, as follows:

(i) two people representing the tourism industry, one each from Wasatch and Utah counties; and

(ii) one person representing the public at large.

(3) All members shall be residents of the state.

(4) (a) Except as required by Subsection (4)(b), the three public members shall be appointed for four-year terms beginning July 1, 2010.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(5) Any of the three public members may be removed from office by the governor or for cause by an affirmative vote of any four members of the authority.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with consent of the Senate for the unexpired term.

(7) Each public member shall hold office for the term of appointment and until a successor has been appointed and qualified.

(8) Any public member is eligible for reappointment, but may not serve more than two full consecutive terms.

(9) The governor shall appoint the chair of the authority from among its members.

(10) The members shall elect from among their number a vice chair and other officers they may determine.

(11) The powers of the authority shall be vested in its members.

(12) Four members constitute a quorum for transaction of authority business. An affirmative vote of at least four members is necessary for any action to be taken by the authority.

[~~(13) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) Members may decline to receive per diem and expenses for their service.~~]

[~~(b) (i) State government officer and employee members who do not receive salary, per diem, or~~

~~expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the authority at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) State government officer and employee members may decline to receive per diem and expenses for their service.~~]

[~~(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) Local government members may decline to receive per diem and expenses for their service.~~]

(13) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 2. Section 9-3-602 is amended to read:

9-3-602. Creation -- Members -- Chair -- Powers -- Quorum -- Per diem and travel expenses.

(1) There is created an independent body politic and corporate known as the "Utah State Railroad Museum Authority," hereafter referred to in this part as "the authority."

(2) The authority is composed of 11 members as follows:

(a) one member of the county legislative body of Weber County appointed by that legislative body;

(b) two members of the county legislative body of Box Elder County appointed by that legislative body;

(c) the executive director of the Department of Transportation or the director's designee; and

(d) seven public members appointed by the governor, as follows:

(i) two individuals representing the tourism industry, one each from Weber and Box Elder Counties;

(ii) one individual representing the public at large; and

(iii) four individuals representing railroad historic and heritage preservation organizations active in Weber and Box Elder Counties, as follows:

(A) one individual representing the Railroad and Locomotive Historical Society Golden Spike Chapter;

(B) one individual representing the Golden Spike Heritage Foundation;

(C) one individual representing the Golden Spike Association; and

(D) one individual representing the Corinne Historical Society.

(3) All members shall be residents of the state.

(4) (a) Except as required by Subsection (4)(b), the governor shall appoint the seven public members for four-year terms beginning July 1.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members appointed under Subsection (2)(d) are staggered so that approximately one-half of the seven public members are appointed every two years.

(5) Any of the seven public members may be removed from office by the governor or for cause by an affirmative vote of six members of the authority.

(6) When a vacancy occurs in the public membership for any reason, the governor shall appoint a replacement for the unexpired term.

(7) Each public member shall hold office for the term of the member's appointment and until a successor has been appointed and qualified.

(8) A public member is eligible for reappointment, but may not serve more than two full consecutive terms.

(9) The governor shall appoint the chair of the authority from among its members.

(10) (a) The members shall elect from among their membership a vice chair and other officers as they may determine.

(b) The officers serve as the executive committee for the authority.

(11) The powers of the authority are vested in its members.

(12) (a) Six members constitute a quorum for transaction of authority business.

(b) An affirmative vote of at least six members is necessary for an action to be taken by the authority.

[~~(13) (a) A member who is not a government employee receives no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(b) A state government officer or employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and~~

~~expenses incurred in the performance of official duties from the authority at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(c) A local government member who does not receive salary, per diem, or expenses for the member's service from the entity that the member represents may receive per diem and expenses incurred in the performance of the member's official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(d) A member may decline to receive per diem and expenses for the member's services.~~]

(13) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 3. Section 32B-2-201 (Effective 07/01/11) is amended to read:

32B-2-201 (Effective 07/01/11). Alcoholic Beverage Control Commission created -- Per diem and travel expenses.

(1) There is created the "Alcoholic Beverage Control Commission." The commission is the governing board over the department.

(2) (a) The commission is composed of five part-time commissioners appointed by the governor with the consent of the Senate.

(b) No more than three commissioners may be of the same political party.

(3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the governor shall appoint each new commissioner or reappointed commissioner to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of no more than two commissioners expire in a fiscal year.

(4) (a) When a vacancy occurs on the commission for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.

(b) Unless removed in accordance with Subsection (6), a commissioner shall remain on the commission after the expiration of a term until a successor is appointed by the governor, with the consent of the Senate.

(5) A commissioner shall take the oath of office.

(6) (a) The governor may remove a commissioner from the commission for cause after a public hearing conducted by:

(i) the governor; or

(ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

(b) At least 10 days before the hearing described in Subsection (6)(a), the governor shall provide the commissioner notice of:

(i) the date, time, and place of the hearing; and

(ii) the alleged grounds for the removal.

(c) The commissioner shall have an opportunity to:

(i) attend the hearing;

(ii) present witnesses and other evidence; and

(iii) confront and cross examine witnesses.

(d) After a hearing under this Subsection (6):

(i) the person conducting the hearing shall prepare written findings of fact and conclusions of law; and

(ii) the governor shall serve a copy of the prepared findings and conclusions upon the commissioner.

(e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing examiner shall issue a written recommendation to the governor in addition to complying with Subsection (6)(d).

(f) A commissioner has five days from the day on which the commissioner receives the findings and conclusions described in Subsection (6)(d) to file written objections to the recommendation before the governor issues a final order.

(g) The governor shall:

(i) issue the final order under this Subsection (6) in writing; and

(ii) serve the final order upon the commissioner.

[~~(7) (a) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and expenses incurred in the performance of the commissioner's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(b) A commissioner may decline to receive per diem and expenses for the commissioner's service.~~]

(7) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) (i) The commission shall elect:

(A) one commissioner to serve as chair;

(B) another commissioner to serve as vice chair; and

(C) other commission officers as the commission considers advisable.

(ii) A commissioner shall serve in the office to which the commissioner is elected under Subsection (8)(a)(i) at the pleasure of the commission.

(b) Each commissioner has equal voting rights on a commission matter when in attendance at a commission meeting.

(c) Three commissioners is a quorum for conducting commission business.

(d) A majority vote of the quorum present at a meeting is required for the commission to act.

(9) (a) The commission shall meet at least monthly, but may hold other meetings at times and places as scheduled by:

(i) the commission;

(ii) the chair; or

(iii) three commissioners upon filing a written request for a meeting with the chair.

(b) Notice of the time and place of a commission meeting shall be given to each commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public Meetings Act. A commission meeting is open to the public, except for a commission meeting or portion of a commission meeting that is closed by the commission as authorized by Sections 52-4-204 and 52-4-205.

Section 4. Section 63A-3-106 is amended to read:

63A-3-106. Per diem rates for board members.

(1) As used in this section and Section 63A-3-107:

(a) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(b) "Board member" means a person appointed or designated by statute to serve on a board.

[~~(b)~~] (c) "Executive branch" means [~~all departments, divisions, agencies, boards, and offices~~] a department, division, agency, board, or office within the executive branch of state government.

[~~(c)~~] (d) "Governmental entity" has the same meaning as provided under Section 63G-2-103.

[~~(d)~~] (e) "Higher education" means a state institution of higher education, as defined under Section 53B-1-102.

[~~(e)~~] (f) "Officer" means [~~a member of a board or~~] a person who is elected or appointed to an office or position within a governmental entity.

(g) "Official meeting" means a meeting of a board that is called in accordance with statute.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules establishing per diem rates to defray subsistence costs for a board member's attendance at an official meeting [~~of a board of which the officer or employee is a member~~].

(3) Unless otherwise provided by statute, a per diem rate established under Subsection (2) is applicable to a board member who serves:

(a) [~~is applicable to an officer or employee of~~] within the executive branch, except as provided under Subsection (3)(b);

(b) [~~is applicable to an officer or employee of~~] within higher education, unless higher education pays the costs of the per diem; [~~and~~]

(c) on a board that is:

(i) not included under Subsection (3)(a) or (b); and

(ii) created by a statute that adopts the per diem rates by reference to:

(A) this section; and

(B) the rule authorized by this section; and

[~~(c) may be applicable to an officer or employee of~~]

(d) within a government entity that is not included under Subsection (3)(a), if the government entity adopts the per diem rates by reference to:

(i) this section; or

(ii) the rule establishing the per diem rates.

(4) (a) Unless otherwise provided by statute, a board member [~~of a board~~] may receive per diem under this section and travel expenses under Section 63A-3-107 [~~when~~] if the per diem and travel expenses are incurred by the board member for attendance at an official meeting [~~of a board~~].

(b) Notwithstanding [~~the provisions of~~] Subsection (4)(a), a board member may not receive per diem or travel expenses under this Subsection (4) if the board member is being paid [~~as an officer or employee of~~] by a governmental entity while performing the board member's service on the board.

(5) A board member [~~of a board~~] may decline to receive per diem for the board member's service.

Section 5. Section 63A-3-107 is amended to read:

63A-3-107. Travel expenses of board members and state officers and employees.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules governing in-state and out-of-state travel expenses.

(2) Unless otherwise provided by statute, a travel expense rule established under Subsection (1) is applicable to:

(a) [~~is applicable to~~] a board member, an officer, or employee of the executive branch, except as provided under Subsection (2)(b);

(b) [~~is applicable to~~] a board member, an officer, or employee of higher education, unless higher education pays the costs of the travel expenses; [~~and~~]

[~~(c) may be applicable to~~]

(c) a board member who:

(i) is not included under Subsection (2)(a) or (b); and

(ii) serves on a board created by a statute that adopts the travel expense rates by reference to:

(A) this section; and

(B) the rule authorized by this section; and

(d) a government entity that is not included under Subsection (2)(a), if the government entity adopts the travel expense provisions by reference to:

(i) this section; or

(ii) the rule establishing the travel expense provisions.

(3) The Division of Finance shall make the travel expense rules on the basis of:

(a) a mileage allowance; and

(b) reimbursement for other travel expenses incurred.

(4) The travel expense rules may specify an exception to a travel expense rule or allow [~~modification~~] the director of the Division of Finance to make an exception to a travel expense rule, when justified by the executive director of the executive branch agency or department, to meet special circumstances encountered in official attendance at a conference, convention, meeting, or other official business, as determined by the director of the Division of Finance.

(5) [~~(a)~~] An officer or employee of the executive branch may not incur obligations for travel outside [~~Utah~~] the state without the advance approval [~~of the director of the Division of Finance. (b) The director of the Division of Finance may delegate the authority to approve travel outside the state to an~~] of the executive director or a designee of the executive director of [~~a state~~] an executive branch department or agency.

[~~(c) The approval under Subsection (5)(a) or (b), shall include a certification as to the availability of funds.~~]

(6) A board member [~~of a board~~] may decline to receive travel expenses for the board member's service.

Section 6. Section 73-30-201 is amended to read:

73-30-201. Advisory council created -- Staffing -- Per diem and travel expenses.

(1) There is created an advisory council known as the "Great Salt Lake Advisory Council" consisting of 11 members listed in Subsection (2).

(2) (a) The governor shall appoint the following members, with the consent of the Senate:

(i) one representative of industry representing the extractive industry;

(ii) one representative of industry representing aquaculture;

(iii) one representative of conservation interests;

(iv) one representative of a migratory bird protection area as defined in Section 23-28-102;

(v) one representative who is an elected official from municipal government, or the elected official's designee;

(vi) five representatives who are elected officials from county government, or the elected official's designee, one each representing:

(A) Box Elder County;

(B) Davis County;

(C) Salt Lake County;

(D) Tooele County; and

(E) Weber County; and

(vii) one representative of a publicly owned treatment works.

(3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

(b) Notwithstanding Subsection (3)(a), at the time of appointment or reappointment, the governor shall adjust the length of terms of voting members to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.

(d) A member shall hold office until the member's successor is appointed and qualified.

(4) The council shall determine:

(a) the time and place of meetings; and

(b) any other procedural matter not specified in this chapter.

(5) (a) Attendance of six members at a meeting of the council constitutes a quorum.

(b) A vote of the majority of the members present at a meeting when a quorum is present constitutes an action of the council.

[~~(6) (a) (i) A member who is not a government employee may not receive compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) A member who is not a government employee may decline to receive per diem and expenses for the member's service.~~]

[~~(b) (i) A state government officer or employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and expenses incurred in the performance of the official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) A state government officer or employee member may decline to receive per diem and expenses for the member's service.~~]

[~~(c) (i) A local government member who does not receive salary, per diem, or expenses from the entity that the member represents for the member's service may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.~~]

[~~(ii) A local government member may decline to receive per diem and expenses for the member's service.~~]

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The Department of Natural Resources and the Department of Environmental Quality shall coordinate and provide necessary staff assistance to the council.

Section 7. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 10, 2011.

(2) The amendments to Section 32B-2-201 (Effective 07/01/11) take effect on July 1, 2011.